

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD**

WRIT PETITION NO. 11773 OF 2016

Suresh s/o Krushna Chaudhari
age 56 years, occ. Business
r/o Yeshodip Electricals Shop
In front of Sonichchawadi
Jamner Road, Bhusawal
Dist. Jalgaon

.. PETITIONER

VERSUS

Digambar s/o Yeshwant Patil
age 67 years, occ. Retd.
r/o In front Sonichchawadi
Jamner Road, Bhusawal
Dist. Jalgaon

.. RESPONDENT

Mr. A.M. Gholap, advocate for petitioner.
Mr. Shaikh Naseer, advocate for respondent.

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CORAM : S. B. SHUKRE, J.

DATE : 16th JANUARY, 2017.

ORAL JUDGMENT :

1. Heard.
2. Rule. Rule made returnable forthwith. Heard finally by consent.
3. Application filed under Order 6 Rule 17 of the Code of Civil Procedure seeking amendment to the written statement was for bringing on record two subsequent events namely; i) during the pendency of the appeal, two tenants of the original plaintiff vacated the premises belonging to the original plaintiff and ii) during the pendency of appeal, son of the original plaintiff started running adjoining shop under the name and style 'Maharashtra Electricals'. It is seen from the paper book of this writ petition that the contention of petitioner made in the additional written

statement in respect of running of shop 'Maharashtra Electricals' was that it was being run by the original plaintiff. Now petitioner submits that it is being run by the son of the original plaintiff. The impugned order, however, shows that the learned District Judge has mistakenly held that there is no difference between pleadings appearing in the additional written statement and the pleadings now sought to be introduced by seeking amendment in the written statement. The difference is rather obvious. It is however, completely missed out by the learned District Judge and therefore, the order dated 28.09.2016 on this aspect of the matter has to be held as perverse. The matter however, does not stop here. The learned District Judge has also not considered the first subsequent development as pointed out earlier and, no finding in that regard has been recorded. This is another perversity.

4. In the result, this writ petition deserves to be allowed and the matter needs to be remitted back to the learned District Judge for decision afresh on application vide Exh. 14, in accordance with law and, after hearing both sides, as expeditiously as possible, preferably within four weeks from appearance of the parties. Parties to appear before the learned District Judge on 4th February, 2017. Writ petition is allowed accordingly with cost. Impugned order is quashed and set aside. The matter is remitted back to the learned District Judge for deciding afresh application vide Exh. 14, in accordance with law. Rule made absolute in above terms.

(S. B. SHUKRE)
JUDGE