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***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION***

WRIT PETITION NO. 1889 OF 2016

Fatechand Nagraj Ranka and Ors.

... Petitioners.

V/s.

Vivek Nemichand Mehta and Ors.

... Respondents.

Mr. A.Y. Sakhare, Senior Advocate i/b. Deepak More for the
Petitioners.

Mr. S.V. Sadavarte for Respondents 1 and 2.

CORAM : N.M. Jamdar, J.

11 January, 2017.

Oral Order :-

By order dated 4 March 2016 the notice was issued to the Respondents for final disposal. The learned Counsel appears for the Respondents. Accordingly, taken up for final disposal.

2. By the impugned order dated 30 November 2015, the application taken out by the Petitioner – Plaintiff for amendment of the plaint, has been rejected. The Petitioner filed a Civil Suit No. 112 of 2013 in the Court of Small Causes Court, Pune seeking

possession of the suit premises from the Respondents. In the paragraphs 6 and 7 of the plaint, the Petitioner stated that the Petitioner has obtained permission for construction of new building from the Municipal Corporation and for re-construction of the premises, the structure in the possession of the Respondents would cause obstruction in the construction. Certain commitments regarding handing over reconstructed premises to the Respondents were made in these two paragraphs. By way of an amendment, paragraphs 6 and 7 were sought to be deleted and substituted stating that in view of changed position, it is not possible to give the premises in the newly constructed premises to the Respondents and the Petitioner is willing to give some other premises on rental basis in the nearby area. The learned Civil Judge by the impugned order has rejected the amendment on the ground that it is vague and that it is inconsistent.

3. The Petitioner had made certain commitments at the time of filing of the suit and according to the Petitioner, in view of changed circumstances, the commitments, as stated, cannot be honoured and they are sought to be substituted by another commitment. As far as deletion of paragraphs 6 and 7 are concerned, since it is open to the Respondent to contend that the earlier commitment are being deviated from, such deletion would prejudice the Respondents. At the same time, if there are

subsequent events by which the Petitioner cannot honour the commitments, then not granting such amendment will also prejudice the Petitioner.

4. In the circumstances, appropriate course of action would be to permit amendment of the plaint and to include only paragraph 4 in the application dated 27 January 2015 as paragraph 6(a) to the plaint. The Respondents will be entitled to file an additional written statement in respect of the amended portion and all contentions of the parties will have to be kept open.

5. Accordingly, the Writ Petition is disposed of by permitting the Petitioners to amend the plaint to incorporate paragraph 4 of application dated 27 January 2015 as paragraph 6(a) to the plaint. Amendment to be carried out within period of four weeks from today. All contentions of the parties are kept open. The Writ Petition is disposed of in above terms.

(N.M. Jamdar, J.)