

Vidya Amin

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION No. 5278 OF 2017

Bhimsen Nivrutti Shinde ... Petitioner
Vs.
Smt. Mahananda Chagan Shinde ... Respondent

Mr. Mohansinh U. Rajput, Advocate for the petitioner.
Mr. Suhas S. Inamdar, Advocate for respondent no. 4.

CORAM: MRS.MRIDULA BHATKAR, J.
DATE: 27th July, 2017.

P.C.:

Rule. Rule made returnable forthwith. By consent, this Petition is heard finally and decided at the stage of admission, as the issue involved is short.

2. This Writ Petition is directed against the order dated 31st January, 2017 passed by the Ad-hoc District Judge-2, Solapur below Exhibit 16 in Regular Civil Appeal No. 464 of 2012. The petitioner/plaintiff has filed the suit for possession against the respondent/defendant. The suit was dismissed, therefore, the plaintiff filed Regular Civil Appeal. In the Regular Civil Appeal, the petitioner/appellant filed an Application under Order 6 Rule 17 of the Code of Civil Procedure for amendment in the plaint. The petitioner/appellant is a brother-in-law of the respondent. By way of amendment, the petitioner/appellant wanted to add a paragraph that

his brother had filed Divorce Petition against his wife/respondent and he also wants to delete the word “licensee” in the prayer clause.

3. The learned counsel for the petitioner has submitted that by way of amendment, the petitioner wants to give more and better details in respect of pleading that the relations between the respondent and her husband were strained. The learned counsel further submitted that in prayer clause 10-B of the plaint, the word “licensee” is mentioned, which he want to delete. In support of his submissions, the learned counsel relied on the judgment of the Hon'ble Supreme Court in the case of **B.K. Narayana Pillai vs. Parameswaran Pillai & Anr., reported in (2000) 1 SCC 712.**

4. The learned counsel for the respondent opposed this Writ Petition and has submitted that the order passed by the learned District Judge is legal and is to be maintained.

5. Perused the plaint, written statement and the case law. In the case of **B.K. Narayana Pillai** (*supra*), the Hon'ble Supreme Court while dealing with the provisions of amendment under Order 6 Rule 17 of the Code of Civil Procedure, has held that “All amendments of the pleadings should be allowed which are necessary for determination of the real controversies in the suit provided the proposed amendment does not alter or substitute a new cause of

action on the basis of which the original lis was raised or defence taken". It means, for a party seeking amendment has to fulfill two conditions – one, it should be necessary for determination of real controversies in the suit; and secondly, though it may be necessary, it should not change the constitution of the suit and shall not substitute a new cause of action.

6. The amendment in respect of earlier litigation regarding filing of Marriage Petition by the husband against the wife/respondent is not much concerned with the issue of possession and secondly, in paragraph 8 of the plaint, the petitioner/plaintiff has explained the status of the respondent as gratuitous licensee, therefore, prayer clause 10-B of the plaint is bound to be considered in context and hence, no amendment is required. In view of the nature of the amendment which is sought and the pleadings and relief prayed in the plaint, I am of the view that the order passed by the learned Adhoc District Judge, Solapur below Exhibit 16 in Regular Civil Appeal No. 464 of 2012 is legal and correct. Hence, Writ Petition is dismissed.

(MRIDULA BHATKAR, J.)