

Santosh

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 8289 OF 2014

Santosh Baloba Bandgar

...Petitioner

Versus

Prakash Laxman Futak

...Respondent

Mr Avinash Patil, *for the Petitioner.*

Mr Vilas B Tapkir, *for the Respondent.*

CORAM: G.S. PATEL, J

DATED: 16th November 2017

PC:-

1. **Rule.** Respondent waives service. By consent rule made returnable forthwith and taken up for final hearing.

2. Heard.

3. The Writ Petition is directed against an order dated 17th July 2014 rejecting the Plaintiff's application numbered as Exhibit-34. That was an application under Order VI Rule 17 for amendment of the plaint. The Plaintiff sought ejectment *inter alia* on the ground of *bona fide* requirement. He said in paragraph 9 of the plaint that his daughter was suffering from a serious illness. The amendment sought was to include a pleading that the daughter, Radhika, was suffering from cancer. The application was opposed on the ground that this was

known to the Plaintiff earlier and the amendment was sought only after trial began and after the evidence was complete.

4. In my view, the Trial Court took a needlessly rigid view of the matter. The foundational pleading already exists but without the pleading that Radhika suffered from cancer there was a risk, especially given the ground of *bona fide* requirement, of the evidence of her suffering from cancer being left out. The rights of the parties could well be balanced either by ordering costs or by allowing the Defendant to file a supplementary written statement. Certainly no prejudice is caused to the Defendant by allowing such an amendment.

5. The impugned order of 17th July 2014 is quashed and set aside.

6. The amendment is permitted. The amendment will be carried out within a period of two weeks from today. The Defendant will be at liberty to file an additional written statement within a period of three weeks thereafter. If necessary, the Trial Court will frame an additional issue and both sides may address the Trial Court in that regard. The Defendant has not yet filed his evidence Affidavit and his cross-examination has not yet commenced. The Plaintiff will be entitled to lead further evidence in chief and will be cross-examined on all aspects with all contentions being left open.

7. Rule is made absolute in these terms. There will be no order as to costs.

(G. S. PATEL, J.)