

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.6283 OF 2016

Jagdish Prataprai Wariyani,
Age-48 years, Occu-Business,
R/o Shruiram Shop, Kapad Lane,
Latur, Dist.Latur

-- PETITIONER

VERSUS

Sayyad Jahiroddin Sayyad Ibrahim,
Age-53 years, Occu-Business,
R/o Sale Galli, Latur,
Dist. Latur

-- RESPONDENT

Ms.Anjali Dube (Bajpai), Advocate for the petitioner.
Mr.C.R.Deshpande, Advocate for the respondent.

(CORAM : RAVINDRA V. GHUGE, J.)

DATE : 10/01/2018

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith and heard finally by the consent of the parties.

2. The petitioner is the tenant in the original Rent Suit NO.6/2005. Since the suit has been decreed on the ground of bonafide requirement, the petitioner has preferred the Rent Appeal No.04/2010. The petitioner is aggrieved by the order of the Appellate Court dated 16/03/2016, by which application Exh.68 filed by the

petitioner/appellant for bringing on record the fact of the demise of Sayyad Ibrahim Sayyad who is the father of the original plaintiff, has been rejected.

3. I have considered the strenuous submissions of the learned Advocates for the respective sides and have gone through the petition paper book. While issuing notice on 21/06/2016, this court has stayed the appeal by granting ad-interim relief in terms of prayer clause 'C'.

4. The contention of the appellant is that the demise of the father of the plaintiff is likely to have an impact on the pending appeal since the suit has been decreed on the ground of bonafide requirement and the appellant is sought to be evicted.

5. Learned Advocate for the original plaintiff contends that the demise of his father is neither decisive nor would it have any effect on the pending appeal as whether the father of the plaintiff was alive or not, will have no effect on the cause of action put forth by the plaintiff.

6. It is settled law that the merits of the amendment are not to be

assessed while considering an application under Order 6 Rule 17 of the CPC. It only needs to be assessed as to whether the proposed amendment leads to a cause of action which is otherwise barred by limitation, whether such a cause of action would alter the nature of the suit and whether such a request for amendment is belated so as to be struck by the proviso below Rule 17 under Order 6.

7. Keeping the law in view, it needs to be noted that the father of the plaintiff passed away on 12/11/2015 and application Exh.38 seeking amendment for introducing the factum of the death of Sayyed Ibrahim Sayyed, was filed on 30/11/2015. Neither are the merits of the proposed amendment to be seen, nor can the application be termed as being filed belatedly.

8. Considering the above, this petition is allowed. The impugned order dated 16/03/2016 is quashed and set aside and Exh.38 is allowed with the following directions :-

- [a] The petitioner shall carry out the amendment on or before 25/01/2018 in the pending appeal and no extension of time shall be sought for the said purpose, lest the leave to amend shall stand taken away.
- [b] The plaintiff is at liberty to file an additional written statement

if so desired, on or before 09/02/2018.

- [c] Considering the 8 years of pendency of the appeal, the learned Appellate Court shall proceed to decide Rent Appeal No.4/2010 as expeditiously as possible and in any case on or before 30/04/2018.

9. The parties shall act on the print out taken from the Official Website of this Court.

10. Rule is made absolute accordingly.

(RAVINDRA V. GHUGE, J.)