

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.6847 OF 2018

Mahesh Narssaya Bandi ... Petitioner
Vs.
Kantilal Chunilal Patel and others ... Respondents

Mr. A. J. Rizvi for Petitioner.

CORAM : R. G. KETKAR, J.
DATE : JULY 2, 2018

P.C. :

Heard Mr. Rizvi, learned Counsel for the petitioner at length.

2. By this Petition under Article 227 of the Constitution of India, petitioner, hereinafter referred to as 'defendant No.1', has challenged the order dated 11.04.2018 passed by the learned Judge, Court Room No.15 of the Court of Small Causes at Mumbai below exhibit-36 in R.A.E.Suit No.1319/2073 of 2012. By that order, the learned trial Judge allowed the application made by the respondent No.1, hereinafter referred to as 'plaintiff', under Order VI, Rule 17 of the Code of Civil Procedure, 1908 (for short 'C.P.C.') for amending the plaint subject to payment of costs of Rs.1,000/- to the defendants.

3. In support of this Petition, Mr. Rizvi strenuously contended that plaintiff's evidence was over. It was thereafter plaintiff filed application exhibit-36 for amending the plaint. He submitted that the proposed amendment is not necessary. By the proposed amendment, plaintiff wants to contend that the married daughter of the plaintiff also visits the plaintiff with her husband and children. The granddaughter of the

plaintiff (daughter of the plaintiff's daughter) is 8 years old and physically handicapped and mentally disordered and not able to climb staircase to go to the second floor. He submitted that after the marriage, married daughter ceases to be part of her parents family. While allowing the application, the learned trial Judge noted that matter is posted for further evidence of the plaintiff's witness. If the amendment is allowed, defendants will be required to file additional written statement and issue will have to be framed. This will amount to wastage of manpower and time. Despite these observations, the learned trial Judge has allowed the application. He, therefore, submitted that impugned order deserves to be set aside.

4. I have considered the submissions advanced by Mr. Rizvi. I have also perused the material on record. A perusal of the unamended plaint, and in particular paragraph 7 thereof shows that plaintiff has invoked ground of reasonable and bonafide requirement as contemplated by Section 16(1)(g) of the Maharashtra Rent Control Act, 1999 (for short 'Rent Act'). By the proposed amendment, plaintiff wants to add paragraphs 7(a) to 7(d) dealing with his requirement of the suit premises on the ground of his daughter and granddaughter as also plaintiff's grandson who is 14 years old school going boy and that no study room is available to him.

5. In my opinion, the proposed amendment does not change the nature of the Suit. The plaintiff has already invoked ground under Section 16(1)(g) of the Rent Act. In the case of **Abdul Rehman Vs. Mohd. Ruldu, (2012) 11 SCC 341**, the Apex Court has observed in paragraph 13 as under,

“13. Next, we have to see whether the proposed amendments would alter the claim/cause of action of the plaintiffs. In view of the same, we verified the averments in the unamended plaint. As rightly pointed out by Ms. Manmeet Arora, learned

counsel for the appellants that the entire factual matrix for the relief sought for under the proposed amendment had already been set out in the unamended plaint. **We are satisfied that the challenge to the voidness of those sale deeds was implicit in the factual matrix set out in the unamended plaint and, therefore, the relief of cancellation of sale deeds as sought by the amendment does not change the nature of the suit as alleged. It is settled law that if necessary factual basis for amendment is already contained in the plaint, the relief sought on the said basis would not change the nature of the suit.** In view of the same, the contrary view expressed by the trial court and the High Court cannot be sustained. It is not in dispute that the relief sought by way of amendment by the appellants could also be claimed by them by way of a separate suit on the date of filing of the application. Considering the date of the sale deeds and the date on which the application was filed for amendment on the plaint, we are satisfied that the reliefs claimed are not barred in law and no prejudice should (sic would) have been caused to Respondents 13 (Defendants 13 therein) if the amendments were allowed and would in fact avoid multiplicity of litigation.

(emphasis supplied)”

6. It is well settled law that if necessary factual basis for amendment is already contained in the plaint, the relief sought on the said basis would not change nature of the suit as noted earlier. Making clear and explicit what was already implicit in the plaint will not change the nature of the suit. All amendments which are necessary for the purpose of determining real questions in controversy between the parties should be allowed if it does not change basic nature of the suit. On facts, as noted earlier, ground of bonafide requirement was implicit in factual matrix set out in unamended plaint and the proposed amendment does not change nature of the suit. In view thereof, I do not find that the learned trial Judge has committed any error in allowing the Application. After the amendment is carried out, defendants shall file additional written statement restricting to the amended plaint within four weeks thereafter. Hence, Petition fails and the same is dismissed.

7. It is, however, expressly made clear that where a decree is appealed from by the petitioner, any error, defect or irregularity in the impugned order, affecting the decision of the case, may be set forth as a ground of objection in the memorandum of appeal as contemplated by Section 105(1) of C.P.C.

(R. G. KETKAR, J.)

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