

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 5421 OF 2018

M/s. Sudhakar Suryakant Parsewar ... Petitioner

Versus

Ratnamala Sudhakarrao Deshmukh and others ... Respondents

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Mr. Jitendra Patil, Advocate h/f Mr. P. R. Katneshwarkar, Advocate for petitioner.

Mr. M. D. Narwadkar, Advocate for respondent Nos. 1 to 4.

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CORAM : R. G. AVACHAT, J.

ORDER RESERVED ON : 18th AUGUST, 2019

ORDER PRONOUNCED ON : 07th OCTOBER, 2019

ORDER :-

1. Heard learned counsel for the parties.
2. The challenge in this writ petition, is to the order dated 03.03.2018, passed by the District Judge-2, Nanded, on application Exh.18 in an appeal, being Regular Civil Appeal No.37 of 2016. By the impugned order, the application moved by the petitioner-defendant for amendment of the written statement, came to be rejected.

3. The petitioner herein, is the tenant in possession of a shop block, particularly described in paragraph 1 of the plaint. The respondents are the plaintiffs in the suit. The suit has been filed for possession of the shop block given on rent to the petitioner-defendant. The possession of the shop block was asked for on the ground of *bona fide* requirement. The trial Court decreed the suit on 29.02.2016. The petitioner-defendant preferred appeal against the said judgment and decree.

4. Pending the appeal, the petitioner-defendant moved application Exh.18 for amendment of the written statement. It is the case of petitioner-defendant that pending appeal and particularly a few months before the application for amendment was moved, the respondents-plaintiffs constructed 7-8 shop blocks on their land admeasuring 10,000 square feet, situated near Kala Mandir, at Nanded. It is also the case of petitioner-defendant that the respondents/landlords let out some of the shop blocks, recently constructed. All these facts need to be brought on record as they have bearing on the decision of the appeal.

5. The application was strongly resisted, contending that the petitioner-defendant is indulged in dilatory tactics. The application

moved for production of documents by the petitioner-defendant, was withdrawn.

6. The learned District Judge-2, Nanded rejected the application, finding that a lot of time was consumed and exhausted for hearing of application Exh.15, that was moved for adducing additional evidence. The application moved for amendment of written statement has also consumed a lot of time. The learned Judge found that hearing of the appeal was being delayed.

7. In my view, the aforesaid reasons given by the appellate Court for rejection of the application, are untenable in law.

8. The learned District Judge was of the view that the subsequent events have no bearing on fate of the suit. The crucial date for determining *bona fide* need of the landlords was the date, when the *lis* commenced. The basic rule is that, rights of the parties should be determined on the basis of the facts existent on the date of the institution of the suit. In support of the reasons, the learned District Judge placed reliance on some of the authorities relied upon by the respondents-plaintiffs.

9. The learned counsel for the petitioner-defendant would submit that the subsequent events have very much bearing on the appeal.

10. The learned counsel for the respondents-plaintiffs, would, on the other hand, submit that the appellate Court has rightly rejected the application with sound reasons. In support of his contentions learned counsel for the respondents-plaintiffs relied on the judgment of the Apex Court in the case of Anil Bajaj and another Vs. Vinod Ahuja reported in (2014) AIR (SCW) 3130, wherein it has been held that, it would hardly require any reiteration of the settled principle of law that it is not for the tenant to dictate to the landlord as to how the property belonging to the landlord should be utilized by him for the purpose of his business. Also, the fact that the landlord is doing business from various other premises cannot foreclose his right to seek eviction from the tenanted premises so long as he intends to use the said tenanted premises for his own business. The grounds on which leave to defend was sought by the tenant and has been granted by the High Court runs counter to the fundamental principles governing the right of a tenant to contest the claim of bonafide requirement of the suit premises by the landlord under the Delhi Rent Control Act, 1958. Even assuming the

assertions made by the tenant to be correct, the same do not disclose any triable issue so as to entitle the tenant to grant of leave to defend.

11. Order 6 Rule 17 of the Code of Civil Procedure, reads thus:

“17. Amendment of pleadings. – The Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties :

Provided that no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial.”

12. By the proposed amendment the petitioner-defendant wants to bring on record the facts that the respondents – landlord, pending the appeal, constructed 7-8 shop blocks and some of them have been let out. In support of the claim of the petitioner-defendant, some documents were sought to be tendered on record. The application for production of those documents has rightly been not pressed, since the appellate Court would not have allowed the production thereof, unless there is assertion in the pleadings in support of the documentary evidence sought to be let in.

13. There can be no two views over the proposition that the *bona fide* requirement of the landlord can be judged on the basis of the facts

existing on the date of the commencement of the suit. It is also equally settled proposition of law that merits of the proposed amendment cannot be gone into at the time of consideration of the application for amendment of pleadings. The facts of the present case are peculiar one, the petitioner-defendant is in possession of the tenanted premises/shop block. The premises are used for business purpose. The respondents-plaintiffs admit to have owned a piece of land admeasuring 10,000 square feet. A few months before, the application for amendment was moved, the respondents-plaintiffs have constructed 7-8 shop blocks and have let out some of them. These facts are required to be brought on record. Whether, they would have any bearing on the decision of the appeal can be decided by the appellate Court on appreciation of the evidence before it.

14. In my view, the appellate Court has erred in rejecting application Exh.18. Interference is therefore called for with the impugned order. The writ petition succeeds. The writ petition, thus, allowed, setting aside the order dated 03.03.2018 passed by the District Judge-2, Nanded, on application Exhibit.18 in Regular Civil Appeal No.37 of 2018. The said application is allowed.

15. The appellate Court is directed to see that if, evidence in the nature of public documents is sought to be adduced in proof of the contentions being brought on record by way of amendment in the written statement, the same may be allowed. The parties may be given opportunity to lead evidence to the extent of the proposed amendment and in the rebuttal thereof. The appellate Court, would do such exercise and shall not remand the suit only on the ground of the amendment in the written statement.

[R. G. AVACHAT, J.]

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