

Mr. Karan Bhosale a/w. Mr. Datta Mane, Mr. Siraj Ghiwala and
Mr.Naveen Kumar for Petitioner.
Mr. K. H. Chaturvedi for Respondent.

CORAM : R. G. KETKAR, J.
DATE : JUNE 20, 2019

Heard Mr. Bhosale, learned Counsel for the petitioner and Mr.Chaturvedi, learned Counsel for the respondent at length.

2. By this Petition under Article 227 of the Constitution of India, petitioner, hereinafter referred to as 'plaintiff', has challenged the order dated 16.12.2015 passed by the learned trial Judge below exhibit-38 in L.D.Suit No.55 of 2011 as also the order dated 06.01.2017 passed by the Appellate Bench of the Small Causes Court at Bombay in Revision No.10 of 2016. By these orders, the Courts below partly allowed the application made by the plaintiff, under Order VI, Rule 17 of the Code of Civil Procedure, 1908 (for short 'C.P.C.') only to the extent of correction of the date in paragraph 12 of the plaint. In paragraph 12 of the plaint, plaintiff contended that defendant and his son had threatened to the plaintiff on 25.04.2010. Instead of 25.04.2010, plaintiff prayed for substituting that date by 25.04.2011 and the same is allowed. In so far as the rest of the amendments are concerned, the Courts below rejected the same. It is against these orders, plaintiff has instituted the present Petition.

3. Rule. Mr. Chaturvedi waives service for the respondent. In view of the narrow controversy raised in this Petition, Rule is made returnable forthwith and the Petition is taken up for final hearing.

4. In support of this Petition, Mr. Bhosale submitted that plaintiff has instituted L.D.Suit No.55 of 2011 inter alia praying for declaration that he is a gratuitous licensee in respect of flat No.2 admeasuring 450-500 sq.ft. in 'C' Wing, first floor in Makka House Co-operative Housing Society Limited, Karimi Park, Near Municipal Hospital, Oshiwara Garden Road, Ajit Glass, Jogeshwari (West), Mumbai 400 102 (for short 'suit premises'). During the pendency of the Suit, plaintiff filed application exhibit-26 for amending the plaint. By order dated 17.01.2014, the learned trial Judge allowed the application. In pursuance thereof, plaintiff amended the plaint by adding paragraph 2-A and 6-A.

5. He submitted that in fact, plaintiff ought to have amended cause title of the plaint by deleting address of the defendant at C-2, Makka House, Karimi Park, Near Municipal Hospital, Oshiwara Garden Road, Ajit Glass, Jogeshwari (West), Mumbai 400 102 as also carried out the amendment in paragraphs 2 and 14. However, inadvertently, the amendments were not prayed for in respect of these paragraphs.

6. He submitted that defendant has filed written statement and on the basis of the pleadings of the parties, the learned trial Judge has framed the necessary issues. The trial is yet to commence. As the amendment is consequential, the learned trial Judge ought to have allowed the application. The learned trial Judge, however, declined rest of the amendments on the ground that no subsequent events are brought on record by the plaintiff. Plaintiff has also not brought on record any change of circumstances. He submitted that the learned trial Judge totally misdirected himself while rejecting the rest of the amendments.

7. He invited my attention to the order passed by the Appellate Court. The Appellate Court held that the proposed amendment changes the substantial texture of the plaint. Plaintiff also did not bring on record any changed circumstances and if the proposed amendment is allowed, it will cause prejudice to the defendant. He submitted that the approach of the Appellate Court was also perverse. As the trial is yet to commence, the Courts below ought to have adopted liberal approach while permitting the amendment as no prejudice will be caused to the defendant. Defendant is at liberty to file additional written statement to the proposed amendment. He, therefore, submitted that Petition deserves to be allowed.

8. On the other hand, Mr. Chaturvedi supported the impugned orders. He submitted that defendant has filed written statement dated 17.05.2011. On 01.08.2013, the learned trial Judge has framed the issues. He invited my attention to the Suit filed by the defendant in City Civil Court at Dindoshi inter alia praying for declaration that defendant (plaintiff herein) cannot stay in the suit premises against the wishes of the plaintiff (defendant herein) and for directing defendant therein to remove themselves from the suit premises and for perpetual injunction restraining defendant therein from occupying the suit premises along with the plaintiff therein. He submitted that the Courts below were justified in rejecting the application for amendment. Plaintiff did not bring on record any change in circumstances and the proposed amendment will cause prejudice to the defendant. He, therefore, submitted that Petition deserves to be dismissed.

9. I have considered the rival submissions advanced by the learned Counsel appearing for the parties. I have also perused the material on record. It is not in dispute and is rather evident from the record that after the pleadings were completed, the learned trial Judge has framed the

issues. The trial is yet to commence. The plaintiff filed application exhibit-38 for deleting the address of the respondent namely, C-2, Makka House, Karimi Park, Near Municipal Hospital, Oshiwara Garden Road, Ajit Glass, Jogeshwari (West), Mumbai 400 102. A perusal of the plaint shows that plaintiff had given two addresses of the defendant. The other being, flat No.204, Chowa Chandan "B" Building, Kewni Corner, S. V. Road, Jogeshwari (West), Mumbai 400 102. Thus, the nature of the Suit is not changed by deleting the address of the suit premises.

10. The next amendment proposed by the plaintiff is in respect of paragraph 2. It is also apparent that in pursuance of order dated 17.01.2014 below exhibit-26, plaintiff incorporated paragraph 2-A. In paragraph 2-A of the plaint, plaintiff asserted that defendant had come to the suit premises only once in the month of May, 2011 and resided in the suit premises with the plaintiff and his family. From 13.10.2011, neither the defendant nor his son had come to the suit premises till date. By the proposed amendment in paragraph 2, plaintiff has sought deletion of the following sentence:

"The Husband of the Plaintiff's sister i.e. son of the Defendant is also residing in the suit premises from September, 2008 onwards."

and in its place, following portion was proposed to be substituted:

"The husband of the Plaintiff's sister i.e. son of the Defendant is not residing in the suit premises."

11. In so far as the other amendment in paragraph 2 is concerned, plaintiff proposed to delete following portion:

"but as and when the Defendants come from U.A.E. Sharja, the Defendant used to reside in the suit premises. As per knowledge of the Plaintiff the address in India Mumbai, is as per given in the cause title."

and substitute the same by the following:

“but as and when the Defendant comes from U.A.E., Sharjah, the Defendant used to reside at Flat No.204, Chowa Chandan “B” Building, Kewni Corner, S. V. Road, Jogeshwari (West), Mumbai - 400 102. As per knowledge of the Plaintiff the address of the Defendant in India in his Passport No.Z-1433212 issued by the office of the Consulate General of India, Dubai (U.A.E.) is not of suit premises. Similarly, the address of the son of the Defendant in his Passport No.A 9771026 issued by the office of the Consulate General of India, Dubai (U.A.E.) is not of suit premises.”

12. In my opinion, the deletion and substitution in paragraph 2 is consequential in view of the amendment granted by order dated 17.01.2014. In so far as the amendment with regard to adding paragraph 6-B is concerned that is also consistent with paragraph 6-A, which was added in pursuance of order dated 17.01.2014.

13. In so far as paragraph 14 of the plaint is concerned, as the plaintiff has deleted address of the suit premises in the cause title, the words “And the Defendants are” requires to be deleted thereby adding the words “Defendant residing separately in”. In my opinion, the amendment proposed by the plaintiff is consequential. In fact, they should have amended paragraphs 2 and 14 as also added 6-B in application exhibit-26, which was allowed on 17.01.2014. In other words, the amendments proposed by the plaintiff are in consistent with the case made out in an application exhibit-26. The proposed amendment also does not change the nature of the Suit. It also does not cause any prejudice to the defendant and the defendant can be permitted to file additional written statement to the amended portion of the Suit. The trial is yet to commence. The Courts below have totally misdirected while deciding the application for amendment. In view thereof, Petition succeeds. Impugned orders dated 16.12.2015 passed by the learned trial Judge and 06.01.2017 passed by the Appellate Court are set aside. Application exhibit-38 is allowed in its entirety. Amendments in the

main Suit shall be carried out within 14 days and the amended plaint shall be served to the defendant. The defendant is at liberty to file additional written statement within 6 weeks from service of the amended plaint. Rule is made absolute accordingly with no order as to costs.

(R. G. KETKAR, J.)

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