

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.1499 OF 2020

Imex Trade (India)	..Petitioner
Vs.	
Life Insurance Corporation of India	..Respondent

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Mr. A. N. Nesrikar i/b. U. S. Borade, Advocate for Petitioner.
Mr. Akshay A. Shah, Advocate for Respondent.

**CORAM : C.V. BHADANG, J.
DATE : 04th MARCH, 2020**

P.C.

1. The challenge in this petition is to the order dated 24/7/2019 passed by the Estate Officer in Reference Case No.1 and 1A of 2017, that is a case initiated by the respondent for eviction of the petitioner from the subject premises under the Public Premises Eviction Act ('Act' for short). By the impugned order the application for amendment of the original petition filed by the respondent has been allowed.

2. I have heard learned counsel for the parties and perused record.

3. Learned counsel for the petitioner has strenuously urged that the trial before the Estate Officer has commenced, in as much as the cross examination of the witness of the respondent, was started on 5/10/2017 and application for amendment was filed subsequent thereto i.e. on 20/12/2018. It is thus submitted that the proposed

amendment is hit by the proviso to Order VI Rule 17 of the Code of Civil Procedure ('CPC' for short). The learned counsel points out that the application is also hit by delay and latches, in as much as, the alleged inspection reports of the building inspector, on the basis of which the amendment application is filed, are executed in April and August 2018. It is submitted that in such circumstances, the Estate Officer could not have allowed the amendment which is clearly in breach of the proviso to Order VI Rule 17 of the CPC. It is submitted that amendment application cannot be said to be based on any subsequent events.

4. Learned counsel for the respondent has supported the impugned order. It is submitted that the proposed amendment is clearly based on subsequent events i.e. the reports of the building inspector which are dated 24/4/2018 and 3/8/2018. It is submitted that the ground on which the eviction was originally sought is based on arrears of rent and alterations while by the proposed amendment a new ground of sub-letting is sought to be added. It is submitted that the proposed amendment is necessary for deciding the real controversy in the matter.

5. I have carefully considered the rival circumstances and the submissions made and I have gone through the proposed amendment as per schedule annexed to the application for amendment.

6. It appears that the eviction was initially sought on the twin grounds of arrears of rent and the petitioners having carried out certain alterations without permission of the respondent. Prima

facie it appears that the building inspector has carried out inspection in the month of April 2018 and thereafter in the month of August 2018 in which the respondent noticed that there is parting of possession in favour of the proposed respondent No.2 and in that view of the matter the proposed amendment was sought for by filing the application on 20/12/2018.

7. The first consideration for grant of amendment is that the same is necessary for deciding the real controversy in the matter. There is an additional requirement, which is imposed by the proviso to Order VI Rule 17, where the amendment is brought after commencement of the trial. The party seeking such amendment has to demonstrate that inspite of due diligence the amendment could not have been brought prior to such commencement.

8. In the present case, the amendment clearly appears to be necessary for deciding the real controversy in the matter. Even so far as requirement of the proviso is concerned, the amendment appears to be based on subsequent events of the two inspection reports by the building inspector. It is necessary to emphasise that the proviso to Order VI Rule 17 of CPC is not an absolute bar on the grant of amendment if it is otherwise found to be necessary. It is further necessary to note that one of the desired results to allow the amendment is to avoid multiplicity of proceedings. Viewed from this angle, if the respondent can bring fresh action on the ground of sub-letting, there is no reason why such amendment should not be allowed, to avoid multiplicity of proceedings.

9. I have carefully gone through the impugned order and I do not find that the impugned order suffers from any infirmity requiring interference in the supervisory jurisdiction of this Court under Article 227 of the Constitution of India. The petition is without any merit and is accordingly dismissed with no order as to costs.

10. Needless to mention that the respondent shall be entitled to file an additional WS / reply if not already filed to the amended petition within a period of two weeks from today.

C.V. BHADANG, J.