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

WRIT PETITION NO. 83 OF 2020

Ashraf Khan Amir Khan Pathan ... Petitioner.
V/s
Shantaram Narayan Raut & Anr. Respondents.

**ALONGWITH
WRIT PETITION (St) NO.26134 OF 2019**

Chandrakannt Baburao Shewale Petitioner.
V/s
Shantaram Narayan Raut and Ors. Respondents.

**ALONGWITH
WRIT PETITION NO.84 OF 2020**

Mr. Sanjay Prabhakar Sali Petitioner.
V/s
Shantaram Narayan Raut Respondent.

**ALONGWITH
WRIT PETITION NO.85 OF 2020**

Deepak Prabhakar Hadke Petitioner.
V/s
Shantaram Narayan Raut Respondent.

Ms. Smita R. Gadkari for the Petitioner in all the above Writ Petitions.

CORAM : NITIN W. SAMBRE, J.

DATE : JANUARY 07, 2020

P.C.:

1] All these Petitions can be conveniently disposed of by this common order.

2] These Petitions are filed by so-called tenants who suffered decree for recovery of rent and possession/eviction.

3] In an appeal, Petitioner moved an application for amendment of the Written Statement under the provisions of Order VI Rule 17. The learned lower appellate court vide order impugned, rejected the said prayer. As such, this Petition.

4] The learned Counsel for the Petitioner submits that amendment application which was moved before the lower appellate court is based on subsequent developments and germane to the cause to be adjudicated by the lower appellate court.

5] The submissions are, the property which was mentioned in the

schedule to the Plaint in relation to place of business of the Petitioner is already shifted and that being so, the claim to a certain extent, moved by the Plaintiffs i.e. Respondents herein has rendered infructuous/unexecutable. It is further claimed that the plea raised in the amendment application goes to the root of the claim in the suit and that being so, amendment ought to have been granted. The learned Counsel, while inviting attention of this Court to the Judgment of the Apex Court in the matter of *North Eastern Railway Administration, Gorakhpur vs. Bhagwan Das (D) by L.Rs*¹ would urge that amendment to the Written Statement at appellate stage is very much permissible, provided the court must look into injustice caused to the parties and the genuineness of such amendment. The learned Counsel has also drawn support from the judgment of the Apex Court in the matter of *Rajesh Kumar Aggarwal and Others vs. K.K. Modi and Others*² so as to claim that provisions of Order VI Rule 17 are available during appellate stage and, in case, if there are subsequent developments after decree is passed in appeal, the pleadings can be amended.

1 2008 AIR SCW 3159

2 (2006) 4 SCC 385

6] If submissions canvassed by the learned Counsel for the Petitioner are appreciated, it is required to be appreciated that the suit for recovery of rent and termination of tenancy came to be decreed. After aforesaid decree, it is the claim of the Petitioner/judgment debtor that Tapri from which the Petitioner was carrying out his business has been re-located and only meager part of the property of the Respondent/Plaintiff remained in possession of the present Petitioner/judgment Debtor. According to the Petitioner, since the decree speaks of a larger area and the area which remained in possession of the Defendant is a smaller one, amendment was very much required.

7] This court cannot be oblivious to the principle that Executing Court cannot travel beyond decree. Even if it is assumed that the Petitioner remained in possession of a small portion of the area for which decree was passed, still the fact remains that the decree remains executable to that extent.

8] Whether area of which the Petitioner is in possession for which

decree is executable can be looked into at appropriate stage.

9] In the aforesaid background, reasons which are furnished by the learned lower appellate court for rejection of the prayer for granting of amendment to the Written Statement, appears to be very much justified. No case for interference is made out. All these Petitions fail and the same are dismissed.

(NITIN W. SAMBRE, J.)