

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

48 WRIT PETITION NO.2401 OF 2021

KISHOR KAPURCHAND KOTHARI AND ANOTHER
VERSUS
YASHPAL AJIT NAGARKAR

Mr.Y.D. Kale h/f. Mr.R.R. Karpe, Advocate for the
petitioners.

CORAM : N.J.JAMADAR, J.
DATE : 08.03.2021

PC :-

01. Heard learned Counsel for the petitioners.

02. The challenge in this petition is to an order dated 19th December, 2019, passed by the learned 2nd Jt. Civil Judge, Junior Division, Shrirampur on an application [Exh.23], preferred by the respondent-plaintiff seeking permission to amend the plaint under the provisions of Order VI Rule 17 of the Civil Procedure Code, 1908 [the Code], whereby the learned Civil Judge was persuaded to allow the application.

03. The plaintiff-respondent has instituted the suit for recovery of the possession of the demised premises under section 16 of the Maharashtra Rent Control Act, on the ground that the defendant-petitioner has erected permanent structure in the month of December, 2017,

without written consent. It was averred that the eastern side wall was demolished, the old door was closed and a new door was erected thereat. By way of amendment, the plaintiff sought to contend that the defendant had in-fact erected an additional room, which is concealed on account of construction erected by adjoining owner - Mahale.

04. Learned Civil Judge was persuaded to allow the application observing inter-alia that the proposed amendment would not change the nature of the suit. Nor it amounts to withdrawal of the admission in pleading. Being aggrieved, the defendant has invoked the writ jurisdiction.

05. Learned Counsel for the petitioner took the Court through the averments in the application, reply thereto and the impugned order. It was strenuously urged that the proposed amendment completely changes the nature of the suit. Learned Civil Judge was, thus, not justified in allowing the application.

06. It is imperative to note that it is not the case that the bar envisaged by the proviso to Rule 17 of Order VI of the Code came into play. By a catena of precedents, it is well settled that all amendments, which

are necessary to determine the real question in controversy between the parties, ought to be allowed. The Court has to be alive to the potentiality of prejudice to the adverse party. In the case at hand, the statutory ground for re-gaining possession of the demised premises remains the same. By way of proposed amendment, the plaintiff sought to elaborate the nature of construction, which was allegedly unauthorizedly erected. In this backdrop, I am afraid to accede to the submissions on behalf of the petitioner that the proposed amendment would change the nature of the suit. Nor the proposed amendment is such that it has propensity to cause serious prejudice to the defendant/petitioner.

07. On balance, this Court finds that the learned Civil Judge exercised discretion in a justifiable manner. No interference is warranted in the impugned order.

08. The petition stands dismissed.

[N.J.JAMADAR,J.]