

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

WRIT PETITION NO. 6846 OF 2018

Aarti Sanjeev Huzurbazar	... Petitioner
Versus	
Gopal Madanlal Agrawal	... Respondent

**WITH
WRIT PETITION NO. 10381 OF 2018**

Aarti Sanjeev Huzurbazar	... Petitioner
Versus	
Varun Nanakram Ravlani and another	... Respondents

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Mr. Sushant V. Dixit, Advocate for petitioner
Mr. S. H. Jagiasi, Advocate for respondents

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CORAM : R. G. AVACHAT, J.

**RESERVED ON : 09th MARCH, 2021
PRONOUNCED ON : 21st APRIL, 2021**

ORDER :-

. Both these writ petitions are being decided by this order, since common questions of fact and law arise therein.

2. The petitioner in both these petitions is the plaintiff in Regular Civil Suit No.401 of 2014 and Regular Civil Suit No.349 of 2015 pending before the Court of Civil Judge, Junior Division, Jalgaon. Both the suits have been instituted for eviction of the respondents (tenants) herein and possession of the premises on the

ground of reasonable and *bona-fide* requirement. The respondent/tenant (Writ Petition No. 6846 of 2018) moved application Exh-49 for amendment of the written statement. The said application came to be allowed vide order dated 01.01.2018. This order is under challenge in Writ Petition No.6846 of 2018. Thereafter, respondents/tenants (Writ Petition No.10381 of 2018) moved application Exh.61 for amendment of the written statement. The said application came to be allowed vide order dated 26.06.2018. This order is under challenge in Writ Petition No.10381 of 2018.

3. Shri Sushant V. Dixit, learned Advocate for the petitioner would submit that hearing of the suits had already been commenced. The respondents/tenants admitted the petitioner to be the owner/landlady of the suit premises. The applications for the amendment were moved with a view to delay the hearing of the suits. The applications for amendment were silent to demonstrate as to when the respondents got knowledge of the facts sought to be introduced by proposed amendment. The applications were also silent to set out grounds as to how the proposed amendments were necessary for deciding the real questions in controversy. The civil

Court has no jurisdiction to entertain to decide as to whether the property is a trust property. The jurisdiction vests with the authorities under the Maharashtra Public Trust Act. There is non compliance of the proviso to Order 6 Rule 17 of the Code of Civil Procedure (CPC). Suits under the Rent Act are required to be decided within time frame of twelve months. By the amendment, admission given in the written statement would get withdrawn. The trial Court in the given facts and circumstances of the case ought not to have allowed the applications Exh-49 and 61.

4. Shri S. H. Jagiasi, learned Advocate appearing for the respondents, would on the other hand submit that the trial Court has judiciously exercised discretion in allowing the applications. The facts sought to be introduced in the pleadings, came to the knowledge of the respondents only after the petitioner filed her affidavit of evidence in both the suits. According to the learned Advocate, prayer for amendment of the written statement is to be liberally construed as against the prayer for amendment of the plaint. According to the learned Advocate, no admission made in the written statement has been sought to be withdrawn by the proposed amendment.

5. Order 6 Rule 17 of CPC, 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.”

The aforesaid provision was the subject of interpretation in the case of ***Vidyabai and others vs Padmalatha and another – 2009(4) Mh.L.J. 30***. The Apex Court held thus:

“The proviso to Order 6, Rule 17 of Civil Procedure Code is couched in a mandatory form. The Court’s jurisdiction to allow an application for amendment is taken away unless the condition precedent therefor are satisfied viz. it must come to a conclusion that in spite of due diligence the parties could not have raised the matter before the commencement of the trial. Only if such a condition is fulfilled, the amendment is to be allowed.”

Relying on the aforesaid judgment of the Apex Court, this Court in the case of Prabhakar ***Prabhakar Sadashiv Gokhale and another vs Ramesh Shankar Ladkat and others – 2017(4) Mh.L.J 634*** has observed thus:

“7. Order VI, Rule 17 clearly stipulates that the Court may at any stage of the proceedings allow either party to alter or amend these 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 question in controversy between the parties. In 2002, a proviso was added to Rule 17 which clearly states 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 seeking amendment could not have raised the matter before the commencement of trial. What the proviso clearly stipulates and what the Legislature clearly intended was to curtail the discretion that was granted to the Court to grant the amendment in the main part of the Rule. The effect of the proviso is clearly mandatory. It clearly stipulates that no application for amendment "shall" be allowed after the trial had commenced unless the condition as set out in the said proviso is fulfilled. In other words, what the proviso stipulates is that the Court is barred from allowing any amendment after the trial has commenced unless the condition set out in Order VI, Rule 17 is satisfied."

6. While in the case of ***M/s Shree Sagar Stevedores and others vs M/s Shri Kaustub Shipping Pvt. Ltd. -2009 (3) B C J 731***, it has been observed thus:

"10. In my view, the said judgments have no application in the fact situation of the present case. The Defendants in the instant case are seeking to withdraw the acceptance of the fact that the Defendant No.3 was a partner of the said firm and on the said basis are seeking to introduce amendments in paras 7 and 9 whereby a new defence is now sought to be taken. The sum and substance is that the Defendant No.3 could not have negotiated with the Plaintiff on behalf of the Defendant No.1 as he was not a partner of the Defendant No.1, in my view if such an amendment is allowed, the same would be prejudicial to the Plaintiffs. Another aspect that is required to be considered is that the said stand taken up by the Defendants is after a period of seven years and is based on a certificate issued by the Register of Firm, Bavnagar, in

September, 2009, the question that arises is if the Defendant No.3 was not a partner of the Defendant No.1, how come the certificate was obtained only in September, 2009 and why did the Petitioners in the written statement as filed in the year 2002 accepted the position that the Defendant No.3 was a partner. The said fact create a suspicion as regards the claim of the Petitioners on the basis of the said certificate.”

7. I have also perused the other citations relied on by the learned Advocate for the petitioner to find them to be distinguishable on facts of the present matters. The other authorities relied, are as under:

- (i) *Shalini Vyankatesh Puntambekar vs Jayaprakash R. Agarwal – 2002(10 Mh.L.J. 925;*
- (ii) *Anil s/o Vishwanath Jadhav vs Pankaj s/o Indrajeet Bassi – 2009(3) B C J 352.*

8. The petitioner/plaintiff instituted the suits for eviction of the respondents from the tenented premises (shop blocks). It is the case of the petitioner that a house property bearing CTS No.2114 is the two storey building. The ground floor thereof has come to her share. There are in all 18 shop blocks. Block No.10 and Block No.3 are in possession of the respondents as tenants. The shop blocks (suit premises) were given on rent to the respondents by ‘*Acharya Vaidyakiya Pratishthan*’, Jalgaon. The father of the petitioner got the entire

house property (CTS No.2114) back from the '*Acharya Vaidyakiya Pratishtan*', Jalgaon. The petitioner and her husband are medical practitioners. They required the suit premises for their own occupation and running of dispensary/clinic. The respondents in their written statement, no doubt, admitted the suit premises to have been taken back by the father of the petitioner and they had been paying him the rent and on demise to the petitioner herein.

9. The respondent in Writ Petition No. 6846 of 2018 came with the application (Exh-49) for amendment of the written statement. The sum and substance of the matter sought to be introduced in the written statement is as under:

The suit premises were owned by '*Acharya Vaidyakiya Pratishtan*', Jalgaon, a charitable trust. The trust had let out the suit premises to the respondents. In the official record of the trust maintained in the office of the Assistant Charity Commissioner, the suit premises had never been shown to have had belonged to the trust. The respondents made inquiry with the office of the Assistant Charity Commissioner and obtained certified copy on 13.07.2017. It is only on receipt

of the certified copy, the aforesaid facts came to the knowledge of the respondents.

The father of the petitioner had filed Special Civil Suit No.177 of 2013 for partition and separate possession of the entire property in CTS No.2114. It was a collusive suit. The compromise decree came to be passed therein.

When the entire property initially belonged to the public trust, it could not have been transferred in favour of the father of the petitioner without permission and without executing a registered conveyance in that regard. The premises in possession of the petitioner are quite sufficient to cater her needs. If the suits are decreed, the respondents would suffer greater hardship.

10. The petitioner filed her reply to the application Exh.49 before the trial Court (Exh.51). Close reading of the said reply would indicate that the application for amendment was opposed only on the ground of having been preferred with a view to delay the hearing of the suit. It was specifically averred in the reply Exh.51 that the respondent can in his evidence introduce the facts whichever he wanted to introduce by the

proposed amendment. It is needless to mention that evidence without foundation in the pleadings need to be ignored. In the reply to the application for amendment, it had not been alleged that the respondent was in the know of these facts well before the issues were framed and he could have amended the written statement long before, the application Exh.49 was moved. In sum and substance, the application for amendment (Exh.49) was resisted only on the ground of delay. In the case of ***B. K. N. Narayan Pillai vs P Pillai and Ors – MANU/SC/0775/1999***, the Apex Court has observed thus:

“Order 6 Rule 17 of CPC, 1908 – whether prolonged delay is ground of rejection of amendment to pleadings where other party could be compensated by costs – no amendment should be allowed which defeats legal right accruing to opposite party on account of lapse of time – proposed amendments should not cause such prejudice to other side which cannot be compensated by costs – mere fact of delay in filing application cannot be made ground of rejection where other party can be compensated by costs.”

11. The aforesaid observation would go against the petitioner herein. The petitioner has failed to point out what legal right accrued to her is going to be defeated by the proposed amendment. Most of the facts sought to be introduced by the proposed amendment were within the knowledge of the

petitioner herself. Learned Advocate for the respondents was justified in submitting that those facts should have been introduced by the petitioner herself in the plaint.

12. It appears that the open plot was given on lease to 'Acharya Vaidyakiya Pratishthan', Jalgaon. The building came to be constructed thereon. The shop blocks thereon came to be let out to the respondents by the trust. The father of the petitioner got back the entire property. True, the respondents started paying the petitioner rent of the suit premises. What would be the consequences of the proposed amendment on the merits of the suits cannot be decided at this stage. No admission made in the written statement gets withdrawn by the proposed amendment. It is true that whether the property belongs to the public trust can only be decided by the Charity Commissioner. No such issue is likely to be cropped up in the suits. The question is whether the petitioner is entitled for possession of the suit premises on the ground of reasonable and *bona-fide* requirement. Since the application Exh.49 had not been seriously contested before the trial Court in R.C.S. No.401 of 2014, the trial Court was justified in exercising its discretion in

allowing the application. Since both the suits are to be heard together, the trial Court therefore was justified in allowing the application Exh.61 in R.C.S. No.349 of 2015, although the submissions made by the learned Advocate for the petitioner relying on the aforesaid authorities were correct in the facts and circumstances of these cases. The merits of the proposed amendment cannot be gone into at the time of deciding the applications for amendment. Therefore, no interference is warranted with the impugned orders.

The writ petitions, therefore, fail. Both the writ petitions thus, dismissed.

13. The trial Court is requested to decide both the suits preferably within a period of one year from the date of receipt of copy of this order.

[R. G. AVACHAT, J.]

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