

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

WRIT PETITION NO.13801 OF 2021

DR. KIRAN MUKUND MUTHE
VERSUS
NARENDRA KUMANDAS VED DIED THROUGH LRS SMT PUSHPA
NARENDRA VED AND OTHERS

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Advocate for the Petitioner : Shri Sant Kishor C.
Advocate for Respondents 1 to 3 : Shri M.G. Patil

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CORAM: SMT. BHARATI H. DANGRE, J.

DATE :- 19th January, 2022

Per Court:

1. Heard the learned counsel for the petitioner and the respondents.
2. The petitioner, who is the tenant of the respondents in respect of the entire first floor and two blocks of rooms on the ground floor in the two storey building originally owned by Narendra Kumandas Ved in the city of Jalgaon, is aggrieved by the impugned order dated 06.10.2021 passed below exhibit-175 in RCS No.491/2001, under which the amendment application filed by the plaintiffs is allowed.
3. The submission advanced by the learned counsel Shri Sant is to the effect that the said amendment did not meet the purpose of order 6 Rule 17 of the Code of Civil Procedure and while allowing the same, the

learned Judge has failed to adhere to the principles underlying the amendment in the plaint particularly, at the stage when the issues are already settled and though it amounts to change in nature of the suit itself, the same has been granted.

4. RCS No.491/2001 was filed by Narendra Ved for eviction and recovery of the property let out to the petitioner, who runs his clinic/hospital from the said premises. The suit for eviction was brought on the ground of bonafide need and breach of the agreement of tenancy. If the plaint, which is filed at exhibit-C in its amended form, is carefully perused, it refers to the bonafide need in paragraph 2 wherein, the reference is made to two sons of the original plaintiff amongst whom, one is unmarried on account of lack of premises, whereas, another one is married and by stating that the family is in the process of enlargement and for its growing need, the premises are sought for. It is also specifically pleaded that lack of space will give rise to quibble in the family and the premises let out to the petitioner are required by the plaintiffs for their own bonafide use. As far as the breach of conditions of tenancy are concerned, it is also pleaded in paragraph 1A. The cause of action had arisen on 22.08.2001 when the request was made to the petitioner/tenant to vacate the premises, but which was turned down.

5. Based on the claim, the suit was contested by the petitioner/tenant by denying existence of bonafide need. This prompted the Court to

settle the issues and it is only on 03.02.2018, for the first time, the issues including the plaintiffs being in bonafide requirement of the suit property, were settled to the following effect :-

- “4-b) Whether, the plaintiffs are in bonafide requirement of the suit property?*
- 4-c) Would greater hardship be caused to the defendant by passing the decree for possession of suit property than to the plaintiff by refusing to pass it?”*

6. In the year 2005, the original plaintiff filed his evidence affidavit where, he reiterated the bonafide need on a similar lines as was pleaded in the plaint by referring to his two sons, one being married and another being unmarried and the difficulty which may be posed by the family on account of it's enlargement and lack of space will be faced in coming years. This affidavit being filed on 26.06.2005, the original plaintiff died on 02.11.2013. Upon his demise, his son Kamlesh filed his evidence affidavit as witness No.3 on 04.07.2018 and in paragraph 3 of the said affidavit, he referred to the property being occupied by his uncle Haribhai Kumandas Ved, his children and a list of close relations of Haribhai including his sons, daughter-in-law and grandchildren is given. Another uncle Hansraj and his family also gains entry into the said paragraph as occupants in the said premises along with fifth uncle Ranjeet and his family. The statement is made to the effect that in the said property, 41 members are residing and that is how bonafide need is sought

to be pleaded by stating that for all these members including children and their wives, separate spaces are desired by everyone and that is how, the eviction is sought to be justified. The said affidavit being filed on 04.07.2018, the said paragraph was specifically opposed by the petitioner by pointing out that the said portion of the affidavit deserves to be struck off and this request was granted.

This constrained the landlord to approach this Court by filing Writ Petition No.4865/2019 and this Court, by order dated 21.01.2020, granted permission to withdraw the said writ petition on a motion being moved, with liberty to take out an appropriate application for amendment.

7. Premised on this order, an application for amendment was moved by invoking Order 6 Rule 17 and the pleadings are sought to be amended by inserting five distinct clauses. This application came to be granted in it's entirety under the impugned order by recording that the grounds of material alteration and changing the nature of the suit premises by the defendant as well as bonafide requirement of the suit property for the residential purpose of the plaintiffs, are sought to be brought on record by the proposed amendment. By recording that the plaintiffs want to insert subsequent situation and since it relates to the number of family members and also propagate the need of premises for the family members, the learned Judge observed that there is no prima facie reason to disbelieve the same.

By recording that the Order 6 Rule 17 may permit the Court to exercise the power to amend the proceedings at any stage, amendment came to be granted. It is this order, which is impugned in the present Writ Petition.

8. On perusal of the application filed for amendment vide exhibit 175 and the order passed thereon, it can be discerned that the proposed amendment is projected as if it is necessitated on account of subsequent developments during the pendency of the suit. As far as the proposed amendment contained in paragraphs 2A, 2C, 2D and 2E is concerned, the learned advocate for the petitioner Shri Sant submits that he has no serious objection about the said amendment being allowed since the pleadings therein can be traversed by him during the course of recording of evidence. However, as far as paragraph 2B is concerned, Shri Sant raises a serious objection.

9. On perusal of the proposed amendment as contemplated in paragraph 2B, it reveals that the said paragraph 2B would change the nature of the relief claimed in the suit itself since in the original plaint, if perused along with the evidence affidavit of the original plaintiff, it can be seen that bonafide need, which was sought to be projected for the family, was in respect of the original plaintiff and his two sons and need expressed about the family being growing and requiring independent spaces in the coming years. However, there was not a single whisper about

five uncles and their family members, inclusive of their wives and children, ever projected in the plaint or even the evidence affidavit filed by the original plaintiff as early as in 2005. It is only in the year 2018, when one of the son of the original plaintiff, Kamlesh, filed his evidence affidavit, he introduced the brothers of the original plaintiff as well as their uncles and projected that they were occupying the suit premises. Again by amendment, for the first time, he proposed that there are 41 persons, who are cramped in 12 rooms and necessity of this huge family is sought to be pleaded as bonafide need on behalf of the plaintiffs.

10. The parameters of Order 6 Rule 17 being well settled. Though the amendment can be allowed at any stage of the proceedings, in any case, the same is not permitted if it changes/ alters the nature of the original proceedings. The ground of bonafide need, which was sought to be pleaded by the original plaintiff, was in respect of the need and requirement of his two sons and the growing family was restricted only in respect of his two sons. Since the bonafide need was never premised on the basis of the brothers of the plaintiff and his uncles residing together in the said premises, the learned Judge ought to have considered the said aspect while granting the said amendment. Merely because there is power, which can be permitted to be exercised at any stage of the proceedings, to amend the pleadings on such terms as the court may deem just and proper, would not permit the amendment, which would alter/ change the

nature of the original proceedings. On this count itself, the impugned order deserves to be set aside. However, since the proposed amendment barring clause 2-B is not contested, the impugned order is set aside qua clause 2-B. Rest of the impugned order is upheld and since it is informed that necessary amendment has already been effected, the learned Judge shall permit necessary correction to be carried out by deleting paragraph 2-B. The Writ Petition is partly allowed in the above terms.

kps

(SMT. BHARATI H. DANGRE, J.)