

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 4798 OF 2018

Dr. Pradeep S/o Kishan Vane,
Age- 31 years, Occ- Service,
R/o. Rajesh Nagar, Nanded.
At Present Kalyan Dist. Thane.
Through his Power of Attorney Holder,
Gangadhar S/o. Bhujanga Vane,
Age- 44 years, Occ- Service
R/o. Rajesh Nagar, Taroda (Kd).,
Nanded, Tq. & Dist. Nanded.

PETITIONER
[Orig. Plaintiff]

VERSUS

Digambar S/o Sambhaji More,
Age- Major years, Occ- Social Worker,
R/o. Jethwan Nagar, Taroda (Bk),
Nanded, Tq. & Dist. Nanded.

RESPONDENT
[Orig. Defendant]

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Mr. D. Y. Nandedkar, Advocate for the petitioner.
Mr. Sanghmitra Wadmare for Respondent.

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[CORAM : NITIN B. SURYAWANSHI, J.]

RESERVED ON : 14th MARCH, 2022
PRONOUNCED ON: 24th MARCH, 2022

JUDGMENT :

1. Rule. Rule made returnable forthwith. Heard with the consent of parties.

2. This petition impugnes the order passed by 2nd Joint Civil Judge, Junior Division, Nanded, below Exhibit-17 in Regular Civil Suit No. 463/2016.

3. The petitioner/plaintiff filed a suit for possession of the property given on rent to the respondent/defendant on the ground of bonafide requirement, default in payment of rent and for recovery of rent. On failure of the respondent/defendant to file written statement, no written statement order was passed against him. The petitioner then filed his affidavit in lieu of examination-in-chief. Thereafter, the trial Court by setting aside the no written statement order, permitted the respondent to file written statement. In the written statement the respondent denied the ownership of the Petitioner claiming that he purchased the suit property from one Vijaymala Namdeo Kamble by a sale deed.

4. After going through the written statement, the Petitioner filed application Exhibit-17 seeking amendment in the plaint in claim clause, in prayer clause and in the pleadings claiming that if the court comes to a conclusion that the defendant is trespasser, the compensation be awarded to the petitioner so also mesne profit for wrongful possession. The trial Court rejected the amendment application holding that the amendment will change the nature of suit and the amendment is not necessary to decide the controversy between the parties. Hence, the present petition.

5. Heard the rival submissions of learned advocate for the respective parties. Admittedly, the Petitioner sought possession of the suit property from the respondent-tenant on the ground of bonafide requirement and on the ground of default of payment of rent and for recovery of rent. Since the respondent denied the relationship of landlord and tenant in his written statement, the petitioner was required to file application seeking amendment. The petitioner is entitled to claim alternate relief in his plaint. In view of averments in

the written statement, the amendment sought by the petitioner is necessitated.

6. In *Revajeetu Builders and Developers Vs. Narayanswamy and Sons and Others* ((2009) 10 SCC 84), it is held that “*the first condition which must be satisfied before the amendment can be allowed by the court is whether such amendment is necessary for determination of the real question in controversy. If that condition is not satisfied, the amendment cannot be allowed. This is the basic test which should govern the court’s discretion in grant or refusal of the amendment. The other important condition which should govern the discretion of the court is the potentiality of prejudice or injustice which is likely to be caused to the other side. Ordinarily, if the other side is compensated by costs, then there is no injustice but in practice hardly any court grants actual costs to the opposite side. Some basic principles which ought to be taken into consideration while allowing or rejecting the application for amendment are: (i) whether the amendment sought is imperative for properly and effective adjudication of the case; (ii) whether the application for amendment is bona fide or mala fide; (iii)*

the amendment should not cause such prejudice to the other side which cannot be compensated adequately in terms of money; (iv) refusing amendment would in fact lead to injustice or lead to multiple litigation (v) whether the proposed amendment constitutionally or fundamentally changes the nature and character of the case; and (vi) as a general rule, the court should decline amendments if a fresh suit on the amended claims would be barred by limitation on the date of application.”

7. In *B.K. Narayana Pillai Vs. Parameswaran Pillai and Another* (2000) 1 SCC 712), it is held that “*the purpose and object of Order 6 Rule 17 CPC is to allow either party to alter or amend his pleadings in such manner and on such terms as may be just. The power to allow the amendment is wide and can be exercised at any stage of the proceedings in the interests of justice on the basis of guidelines laid down by various High Courts and the Supreme Court. It is true that the amendment cannot be claimed as a matter of right and under all circumstances. But it is equally true that the courts while deciding such prayers should not adopt a hypertechnical approach. Liberal approach*

should be the general rule particularly in cases where the other side can be compensated with the costs. Technicalities of law should not be permitted to hamper the courts in the administration of justice between the parties. Amendments are allowed in the pleadings to avoid uncalled-for multiplicity of litigation. All amendments of the pleadings should be allowed which are necessary for determination of the real controversies in the suit provided the proposed amendment does not alter or substitute a new cause of action on the basis of which the original lis was raised or defence taken. Inconsistent and contradictory allegations in negation to the admitted position of facts or mutually destructive allegations of facts should not be allowed to be incorporated by means of amendment to the pleadings. Proposed amendment should not cause such prejudice to the other side which cannot be compensated by costs. No amendment should be allowed which amounts to or results in defeating a legal right accruing to the opposite party on account of lapse of time. The delay in filing the petition for amendment of the pleadings should be properly compensated by costs and error or mistake which, if not fraudulent,

should not be made a ground for rejecting the application for amendment of plaint or written statement.”

8. In the light of above principles, the amendment application filed by the Petitioner deserves to be allowed, as it would avoid multiplicity of proceedings and the amendment is necessary for determination of real question in controversy. No prejudice or injustice is likely to be caused to the respondent if the amendment is allowed.

9. The learned advocate for the respondent while opposing the petition placed reliance in **Modi Spinning & Weaving Mills Co. Ltdl & Anr. Vs. Ladha Ram & Co.** (1977 AIR 680), wherein it is held that amendment to title pleadings to introduce an entirely different case, under the guise of permissible inconsistent pleas which is likely to cause prejudice to the other side cannot be allowed. There can be no dispute about the said preposition, however, in the facts of the present case since, amendment was necessitated because of the averment in the written statement of the respondent, it needs to be allowed.

10. For the aforestated reasons, the writ petition is allowed in terms of prayer clause 'B'. The impugned order passed below Exhibit-17 in Regular Civil Suit No. 463 of 2016, by 2nd Joint Civil Judge Junior Division, Nanded, is hereby quashed and set aside.

11. Application Exhibit-17 is allowed .

12. Amendment to be carried out within two weeks from the date of receipt of this order.

13. Rule is made absolute to above extent with no costs.

[NITIN B. SURYAWANSHI]
JUDGE