



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

WRIT PETITION NO. 14811 OF 2023

Subhash Dattatraya Lokhande .. Petitioner

Versus

Satyaprakash Gopinath Bhagwat
Since deceased through his L.Rs.
and another .. Respondents

Shri Suyashkumar S. Jangada, Advocate for the Petitioner.

**CORAM : SHAILESH P. BRAHME, J.
DATE : 05TH DECEMBER, 2023.**

FINAL ORDER :

. Heard the learned counsel for the petitioner. The petitioner who is original defendant/tenant is challenging the order dated 08.12.2022 passed below Exhibit 25 in Spl. C. S. No. 02 of 2020 permitting the respondent No. 2/plaintiff to amend the plaint.

2. The learned counsel for the petitioner submits that application Exhibit 25 is presented after settlement of issues. The nature of the suit is going to be changed because of the proposed amendment. He further submits that the proposed amendment raises frivolous pleadings regarding need of the respondent No. 2. In fact, there is no necessity of the demised premises for the respondent. The petitioner is already protected

by the decree passed in R.C.S. No. 12 of 2003.

3. The learned counsel further submits that the learned Judge committed an error of jurisdiction. The respondent No. 1 transferred the demised property to the respondent No. 2 and as such not concerned with the suit property. As the decree passed in favour of the petitioner in R.C.S. No. 12 of 2003 has not been challenged, it would be prejudicial to permit the respondent No. 2 to amend the pleadings. The learned counsel further submits that the application Exhibit 25 shows that it is filed U/O I Rule 10 of the C. P. C. Therefore, the learned Judge transgressed his powers by permitted to amend the pleadings.

4. The petitioner is defending Spl.C.S. No. 02 of 2020 for eviction. After settlement of issues, application Exhibit 25 has been filed for incorporation of the pleadings regarding requirement of the suit property. In technical sense, trial has not been commenced. The nature of the suit is not going to chang as such.

5. The petitioner can deal with the proposed amendment by filing additional written statement if required. If the application Exhibit 25 is rejected that would amount to violation of principles of natural justice. The landlord is entitled to put forth necessary pleadings to make out a case for eviction.

6. The learned counsel has submitted that there is already

decree passed in his favour in R.C.S. No. 12 of 2003. There is no appeal filed against the decree. The present suit is for eviction. The decree passed in favour of the petitioner cannot be an obstacle for the parties to amend their pleadings as permissible in law.

7. The learned counsel for the petitioner seeks reliance on the judgment of the Supreme Court in the matter of ***Vidyabai and others Vs. Padmalatha and another*** reported in ***(2009) 1 SCC 563*** to buttress the submission that the settlement of the issues would amount to commencement of the proceedings. In paragraph No. 8 of the judgment it is clarified that filing of affidavit in lieu of examination in chief of the witness would be commencement of the proceedings.

8. The learned Judge is justified in passing the impugned order. I do not find any merit in the writ petition. Same is dismissed.

[SHAILESH P. BRAHME, J.]

bsb/Dec. 23