

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

WRIT PETITION NO.450 OF 2023

**SANJAY GHANSHYAM SHARMA
VERSUS
VIJAYSINGH BHINSINGH PATIL SINCE DEAD THROUGH LRS
CHANDRAJEET VIJAYSINGH CHAUHANAND AND OTHERS**

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Advocate for Petitioner : Mr. N.E. Deshmukh
Advocate for Respondent No.1 : Mr. M.S. Shah

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CORAM : NITIN B. SURYAWANSHI, J.

DATE : 12th JULY, 2023

PER COURT :

1. Petitioner is aggrieved by the order dated 16/08/2022, passed by learned 4th Joint Civil Judge, Senior Division, Jalgaon, below Exhibit-520 in Regular Civil Suit No.379/1999, thereby allowing application filed by respondents/plaintiffs under Order 6 Rule 17 of the Code of Civil Procedure.

2. Respondents/plaintiffs have filed the suit for recovery of possession of the tenanted suit premises and for recovery of rent, in the year 1999. Written statement was filed by the defendant in the year 2000. In the year 2015 issues were framed. Plaintiffs started their evidence in the year 2016 and so far eight witnesses are examined by them. At this stage, application Exhibit-520 is filed by the plaintiffs on 27/06/2022 seeking amendment in the plaint. Petitioner/defendant by filing detail say, opposed the application

stating that once recording of evidence commences, such permission cannot be granted and hence, application may be rejected. Trial Court has allowed the application by imposing costs of Rs.2,000/-. Hence, the present petition.

3. Heard learned advocate for petitioner and learned advocate for respondent No.1. Perused the writ petition memo, annexures thereto and the impugned order.

4. Admittedly, suit is of the year 1999 and hence, amended proviso of Order 6 Rule 17 is not applicable to the facts of the present case. Much stress is given by learned advocate for petitioner on the lack of due diligence on the part of plaintiffs in filing application. According to him, application is filed only with a view to fill up the lacunas which have occurred in evidence of plaintiffs and their witnesses.

5. It appears from record that the plaintiffs have laid foundation in their pleadings that defendant has kept sub-tenant in suit premises. In the application it is contended by plaintiffs that they came to know about exact name of sub-tenant in the year 2016 and after obtaining relevant information about sub-tenant, they have moved the application seeking amendment in the plaint. Trial Court has rightly allowed the application holding that since plaintiffs' evidence is being recorded, defendants shall have opportunity to rebut the said evidence when

their turn comes. Amendment, therefore, does not change the nature of the suit and reliefs claimed, and the same is necessary to effectively adjudicate dispute between the parties. For lack of due diligence, trial Court has rightly imposed costs which is directed to be paid to the defendant.

6. No fault is found with the discretion exercised by the trial Court by allowing amendment application and the said order is in consonance with the settled legal position that amendments are required to be liberally allowed.

7. There is no illegality or perversity in the order impugned in present petition. No case is made out by the petitioner to interfere in exercise of extraordinary writ jurisdiction. Writ petition being devoid of merit, is dismissed.

(NITIN B. SURYAWANSHI, J.)