

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.9660 OF 2022

1. Mr. Jayvant S. Shah
Age :- 68 years, Occ. Business
Office No.6, 1st Floor at 89,
Mohamedli Road, Mumbai 400 003.
2. Smt. Fatima Ismail Banatwala
Age :- 65 years, Occ. Housewife,
Office No.7, 1st Floor at 89,
Mohamedli Road, Mumbai 400 003.
3. M/s. Dinesh Chandra & Co.
Through proprietor Nishith C. Sanghvi
Age :- 59 years, Occ. Business
Office No.13, 1st Floor at 89,
Mohamedli Road, Mumbai-400 003.
4. T. Girdharilal
Through proprietor Lal Sugand
Age :- 68 years, Occ. Business
Office No.12, 1st Floor at 89,
Mohamedli Road, Mumbai-400 003.
5. Samir Shobhagchand Shah
Age :- 62 years, Occ. Business
Office No.15/16, 1st Floor at 89,
Mohamedli Road, Mumbai- 400 003.
6. Mr. Sanjiv A. Sanghvi
Age :-49 years, Occ. Business
Office No.17/21, 1st Floor at 89,
Mohamedli Road, Mumbai 400 003

8. Abu Baker Moosa Batliwala
Age :- 70 years, Occ. Adult
Office No.1 & 2, 1st Floor at 89,
Mohamedali Road, Mumbai 400 003.

...Petitioners

V/s.

1. Bombay Mercantile
Co-operative Bank Limited,
A Society registered under Bombay
Co-operative Society Act, 1925 having
its registered office at Mercantile
Co-operative Bank Building,
79, Mohammedli Road,
Bombay 400 003.
2. Mr. Jagdish Savailal Sanghavi
3. Mr. Mahesh Savailal Sanghavi
4. Mrs. Shantaben Savailal Sanghavi
(Deleted Since deceased)
Nos.2 & 3 being the sons and No.4.
Being the widow of late Savailal
Laxmidas carrying on business
in the name of M/s. T. Laxmidas & Co.,
at 89, Mohamedali Road, Bombay 400 003
and residing at 31-B, Carmichael Road,
Bhagvati Bhavan No.2, Flat No.2,
1st Floor, Bombay 400 026.
5. Mr. S.K. Rajguru, Advocate
(Deceased)
6. Mr. Shaikhali, Advocate
(since deceased)

7. Dr. Aamir Shaikh s/o. Shaikh
Alilr of Mr. Shaikh Ali
Age :- Not known, Occ. Doctor,
Residing at 34, Mehrnaz, 3rd Floor,
Cuffe Parade, Mumbai 400 005.
8. Mr. Hiralal Pannalal Vyas
9. Jugal Kishore Vyas
10. Om Prakash Vyas
11. Anil Kumar Vyas
12. Kiran Kumar Vyas
13. Satish Kumar Vyas
14. Mr. A.N. Bantwala, Advocate
(Deleted since deceased)
15. Smt. Sajida Shabbir Latif
Age :- 54 years, Occ :- Housewife,
Residing at Flat No.401, Nagina
Building CHS, Sani Shopping Centre,
Jogeshwari (West), Mumbai 400 102
16. Smt. Rabina Rahu Rao
Age :- 49 years, Oc: Housewife,
Residing at C-26, New Akash Ganga,
Yamuna Nagar, Andheri (West),
Mumbai 400 053
17. Mr. Shaukat A. Banatwala
Age :- 45 years, Occ :- Service,
Residing at 16/35, Villiers Street,
Rockdale, New South Walves,
2216, Australia

18. Mrs. Taramati Shantilal Mehta
19. Mr. Kazamli Noormohamed Charani
20. Mrs. Dhanlaxmi Bhagwandas
21. Mr. Shobhagchand J. Shah
(Since deceased)
22. Mr. Amratlal Manganlal Jain
23. Smt. Vasantben A. Sanghavi
(deleted since deceased)
Wd/o Anantraai Parmanand Sanghavi,
Age :-58 years, Occ:- Housewife,
24. Vimal A. Sanghavi
Age :- 33 years, Occ:- Business,
25. Rajiv A. Sanghavi
S/o. Anantraai Parmanand Sanghavi
26. Sanjiv A. Sanghavi
S/o. Anantraai Parmanand Sanghavi
27. Dipika R. Sanghavi
D/o. Anantraai Parmanand Sanghavi
Age :-31 years, Occ :- Housewife,
Residing at C-4, Indradeep Society,
171, L.B.S. Marg, Ghatkopar (West),
Mumbai 400 086, being the heirs And
legal representatives of Mr. Anantraai
Parmanand Sanghavi
28. Mr. Dhirajlal Premji Chandan

29. Mr. Abdul Aziz Chasmawala
Occupying cabin spaces in portion
Of the first floor at 69, Mohamedli Road,
Bombay 400 003.
 30. Mrs. Khatijabai Moosa Umar Batliwala
(Since deceased)
 31. Ismail Moosa Batliwala
(Deleted since deceased)
 32. Mohammed Hussein Moosa Batliwala
(All of them being the heirs of
Mrs. Khatijabai Moosaumer Batliwala
(since deceased) and all residing at Room No.11
and 2nd floor of Darvesh Mahal at 35, Mohamed ali
Road, Bombay 400 003)
 33. M/s. A. Salemohamed & Co.
Occupying a room portion of
1st Floor at 89, Mohamed ali Road,
Bombay- 400 003.
- Respondents.

Ms.Eventa A. Gonsalves with Mr.Reyden L. Gonsalves, Advocates for the
petitioners.

Ms.Snehal Modi, Advocate for the Respondent No.1.

CORAM : ABHAY AHUJA, J.

DATE : 08 JUNE, 2023.

JUDGMENT :-

1. This Petition filed under Article 227 of the Constitution of India
takes exception to the order dated 7th July, 2022 passed in Revision

Application No.53 of 2022 by the Appellate Bench of the Court of the Small Causes at Mumbai.

2. The petitioners are tenants of the Respondent No.1-Bank, (Original Plaintiff) in the RAE Suit No.1794/5544 of 1986 (the “said suit”), in respect of the premises in the building at 89, Mohammed Ali Road, Mumbai 400 003 (the “said property”).

3. The Respondent No.1-Bank had filed the said suit against Shri. Jagdish Savailal Sanghavi and ors., the Respondents No.2, 3 and 4 and the petitioners and their respective Predecessors-in-title and other Respondents seeking Decree of Eviction in respect of the suit premises viz, 1st, 2nd and 3rd floors of the said property, *inter-alia*, on the ground of bonafide requirement.

4. Pending the hearing and final disposal of the said suit, in or about May 1987, the original Defendants No.1, 2 and 3 being the Respondents No.2, 3 and 4 (deleted since deceased) surrendered vacant possession of the 2nd and 3rd floors of the suit premises and also relinquished some portion in respect of the 1st floor of the suit premises to the Respondent

No.1-Bank, in consideration of accepting smaller alternate premises on the 1st floor of the said building and for certain compensation.

5. The possession of the 2nd and 3rd floors was acquired by the Respondent No.1-Bank in May 1987. It is the case of the petitioners that despite the same, Respondent No.1 did not amend the plaint and continued the suit against the Defendants.

6. The Defendants filed their respective written statements. That issues were framed on 14th May, 1999, and even on the date of the framing of the issues, the suit premises were described in the plaint as comprising 1st, 2nd and 3rd floors of the said property. That, additional issues were framed on 23rd June, 2008, and even on the date of framing of the additional issues, the suit premises were described as consisting of 1st, 2nd and 3rd floors of the said property.

7. The Respondent No.1-Bank filed evidence of PW-1 on 10th October, 2008 with the list of documents and an order was passed on the said documents on 12th August, 2009. The PW-1 was cross-examined from 10th September, 2009 to 3rd September, 2011.

8. While the petitioners' evidence was in progress, the Respondent No.1-Bank filed application for amendment of the plaint by incorporating therein paragraph 2A for amendment of prayer clause (a) to the plaint. The said amendment was carried out on 12th January, 2016. By the said amendment the Plaintiffs added paragraph 2A and it is submitted that for the first time it was disclosed that in May-1987 the Defendants No.2 and 3 had surrendered the vacant possession of the 2nd and 3rd floors of the subject building/said property and relinquished the tenancy rights in respect of the first floor without handing over possession of the 1st floor and in consideration of accepting a smaller premises on the first floor of the said building and certain compensation. The said paragraph 2A is usefully quoted as under :-

“2A. Pending the suit, in about May 1987 the Defendant No.1, 2, 3, surrendered vacant possession of 2nd and 3rd floors of the Suit Premises and also relinquished (without handing over possession to Plaintiff their tenancy in respect of the 1st floor in consideration of accepting a smaller alternate premises on the 1st floor of suit Building and certain compensation. In view of the subsequent event, the Deft. No.1, 2 and 3 are now tenant only in respect of the first floor of the Suit building and the Plaintiffs are now confining the suit only for recovery of first floor of the suit building from the Defendants.)”

9. By the said amendment the Respondent No.1-Bank also confined their prayer for decree of possession against the petitioners in respect of the entire first floor only.

10. It is submitted that the Respondent No.1-Bank did not continue with the cross-examination of DW-9 and filed Application No.299 of 2021 in the said suit, seeking amendment as per the Schedule at page 110 to 118 of the petition.

11. Ms. Eventa Gonsalves, learned counsel for the petitioners submits that the petition primarily involves two issues. Firstly, whether subsequent events can be allowed to be added to a plaint when the ground in the suit is for bonafide requirement; secondly, whether the amendment can be permitted considering the hardship that would be caused to the petitioners considering that the said suit is filed in the year 1986 and the evidence of the Bank is already been closed. She submits that the entire exercise by the Respondent No.1-Bank is malafide.

12. Ms. Gonsalves, refers to the examination-in-chief of Mr. Manzar Abbas, Chief Legal Officer of the Respondent No.1-Bank as PW-1 dated

10th October, 2008 and to Exhibit-299 being the amendment application at page 101 and in particular to paragraphs No.7 and 8. Learned Counsel submits that the amendment to the plaint in the suit is being pursued only to fill up the lacunae in the plaint on the basis of the evidence, which is not in the pleadings. The said paragraphs are usefully quoted as under :-

“7. The plaintiffs have thereafter engaged our current Advocate who has after reading the papers informed the Plaintiffs that material facts that have been mentioned in Affidavit of evidence and related to our requirement have not been pleaded in the plaint.

8. The plaintiffs have been advised that evidence without pleadings in the plaint cannot be considered.”

13. It is submitted that the petitioners filed their Affidavit-in-Reply opposing the same and the Bank also filed its rejoinder. After hearing the parties, the Trial Court by order dated 16th December, 2021 dismissed the amendment application being Exhibit-299.

14. This order of the Trial Court was challenged by the Respondent No.1-Bank before the Appellate Bench of the Small Causes Court by filing Revision Application No.53 of 2022. The Revision Application came to be allowed by Judgment dated 7th July, 2022 setting aside the order of the Trial Court dated 16th December, 2021, thereby permitting the

Respondent No. 1-Bank to carry out the amendment as per the schedule therein, which amendment statelty has already been carried out.

15. Aggrieved by the said judgment dated 7th July, 2022, the petitioners have filed this petition.

16. Learned Counsel for the Petitioners would submit that clearly the amendment, if allowed will displace the evidence on behalf of the Respondent-Bank and increase the area that would be covered under bonafide need, bringing out a new case, which cannot be permitted by way of an amendment.

17. Learned counsel for the Petitioners also refers to the cross-examination dated 4th October, 2010 of Mr. Manzar Abbas (PW-1) in this regard to submit that by the said evidence Mr. Manzar Abbas had clearly stated that the bank required in all only 2800 sq. ft area towards bonafide need, and did not remember of the area of the 2nd and 3rd floors, which is quoted as under :-

“.....it is correct to say as per para no. 17 to 19 of my examination in chief the bank requires in all 2800 sq.ft. area towards their bonafide need. I do not remember the

area of 2nd floor. The area of 3rd floor is same as that of 2nd floor. It is not correct to say that the area of 2nd floor is 3500 sq.ft. carpet area. It is not correct to say that similarly the area of 3rd floor is 3500 sq.ft. carpet area.....”

(emphasis supplied)

18. Learned counsel for the petitioners further refers to the cross-examination of Mr. Manzar Abbas on 18th December, 2010 and in particular the following extract in support of her contentions is as under :-

“.....The area of second floor 4141 sq.ft., likewise area of third floor is 2391 sq.ft and terrace on the third floor comprising 1750 sq.ft also is there. Beside the present suit, the plaintiff has not filed any suit against the defendant Nos.1, 2 and 3. It is correct to say that, there was settlement between defendant Nos. 1, 2, 3 and plaintiff's bank. It is correct to say that, the said settlement was arrived at during pendency of the present suit. It is correct to say that, there was a correspondence for the purpose of this settlement between plaintiff and defendant Nos.1, 2 and 3. The said correspondence is already produced on record. Exhibit – 56 including page Nos. 88 to 93 is the series of correspondence. It is correct to say that, Exhibit – 54 letter dated 09.07.1987 (page Nos. 80 and 81) is also the part of the said correspondence. It is correct to say that, in view of the said settlement defendant Nos. 1, 2, 3 surrendered tenancy rights in respect of the entire suit premises to the plaintiffs. The agreed consideration for the said surrendering of tenancy in favour of the bank to the tune of Rs.41.50 lakhs. as stated in resolution dated 16.04.1987 Exhibit – 57. It is not correct to say that cash consideration for this surrender was Rs. 60 Lakhs. It is correct to say that, in addition to the said cash consideration plaintiff's bank let out to the defendant Nos.1, 2, 3 the area ad-measuring 803 sq.ft on the first floor of the suit building.....”

19. Learned counsel draws the attention of this Court to the plaint and refers to paragraph 2A and submits that this paragraph was added by way of an amendment in the year 2016 wherein the subsequent event of surrender of vacant possession of 2nd and 3rd floor of the suit premises by the Defendants No. 1, 2 and 3 in the suit around May-1987 as well as relinquishment (without handing over possession to the plaintiff Bank) of the tenancy in respect of 1st floor in consideration of accepting a smaller alternate premises on the 1st floor of the said building and certain compensation) was included thereby confining the claim under the suit only for recovery of the 1st floor of the suit building from the Defendants including the Petitioners.

20. Learned counsel for the Petitioners submits that the amendment proposed to be carried out pursuant to Exhibit-299 should have been part of the amendment of 2016 if the proposed amendments pertained to the same subsequent events and despite that the Respondent No.1-Bank as with malafide intention sought to make the proposed amendments after the evidence of the respondent No.1-Bank has closed.

21. Referring to the order of the Trial Court dated 16th December, 2021, rejecting the application for amendment at Exhibit 299 made by the Respondent No. 1-Bank, Learned Counsel for the Petitioners relies upon paragraphs 22, 23 and 24 to submit that the Trial Court has also clearly held that the application to amend the plaint is with malafide intention to displace the admissions given by PW 1 Mr. Manzar and the Respondent No. 1-Bank had also suppressed that possession of the 2nd and 3rd floors was acquired by the Respondent No. 1-Bank from Respondents No. 2 and 3 in 1987. The said paragraphs 22 to 24 are usefully quoted as under :-

“22. The present suit is filed in the year 1986 therefore the provisions of amended CPC are not applicable to the present suit. It is not in dispute that the merits of amendment cannot be considered at the stage of deciding amendment application. It is also not in dispute that question of limitation can be kept open while allowing amendment application. The only point for consideration as noticed from the application, reply and arguments of both parties is that whether the application is filed with malafide intention to withdraw the admissions given by PW 1 Mr. Murtaza in the cross examination. The plaintiff is seeking amendment in para-7 of the plaint stating that even after, acquiring possession of 2nd and 3rd floor, the plaintiff still requires an area of 8100 sq ft for locating its various departments.

23. It is pertinent to note that, the possession of the 2nd and 3rd floor was acquired by the plaintiff from defendant nos. 1 to 3 in the year 1987, however this fact was suppressed by the plaintiff. During the cross examination of PW 1, it was brought on record by the

defendants that the possession of 2nd and 3rd floor is received by the plaintiff. It was brought on record in the cross examination of PW 1 on 6.3.2010 that the defendant nos. 1 to 3 have surrendered their tenancy on 27.5.1987. It is pertinent to note that the cross examination of PW 1, was completed on 3.9.2011 and thereafter amendment application was filed and it was allowed. Plaintiff has amended para-2a of the plaint stating that defendant nos.1 to 3 have surrendered vacant possession of 2nd and 3rd floor in favour of the plaintiff .

24. PW1 Manzar has admitted in his cross examination dt. 4.10.2010 that the plaintiff Bank requires in all 2800 sq ft area towards their bonafide need . He has further stated in his cross examination dt.18.12.2010 that plaintiff is in possession of an area adm. 4141 sq ft on 2nd floor, 2391 sq ft on 3rd floor and terrace of 1750 sq ft. by the proposed amendment the plaintiff wants to add that the bonafide requirement of the plaintiff is of 8100 sq ft. and if the present application is allowed then certainly the admissions given by the PW 1 Mr. Manzar would be displaced, therefore the proposed amendment is with the malafide intention to displace the admissions made in the evidence of PW 1 Manzar. It is pertinent to note that the possession was obtained in the year 1987, evidence of PW1 was completed in 2011 and subsequently the plaint was amended in the year 2016 but the proposed amendment was not carried out. It is also pertinent to note that the bonafide requirement was of the plaintiff and it was their knowledge merely because Advocate is changed will not be a ground to carry out amendment extending the need for bonafide requirement, therefore application is liable to be rejected hence I answer point no.1 in the negative and proceed to pass the following order:

ORDER

- 1. The application Exh. 299 is rejected.*
- 2. No order as to costs.”*

22. Learned Counsel for the Petitioners would submit that the order of the Appellate Court in Revision therefore deserves to be set aside and the petition be allowed.

23. On the other hand, Ms. Snehal Modi, learned counsel for the Respondent No. 1-Bank opposes the above submissions and relies upon the order of the Appellate Court; she would submit that the Appellate court has rightly observed that the amendment is only about elaborating material particulars with respect to the ground of bonafide requirement that has already been pleaded in the plaint. It cannot be said that the Applicant Bank is coming up with different or a new case. Learned Counsel also refers to affidavit of Examination in chief of Mr. Manzar dated 10th October, 2008 and submits that the amendments proposed by the amendment application have already been brought in evidence in the year 2008. Learned counsel also draws the attention of this Court to paragraphs No. 16 to 18 and 23 of the Appellate Court/impugned order in support of her contentions.

24. Rebutting the contentions made on behalf of the petitioners, learned Counsel refers to the evidence of Mr. Manzar Abbas at paragraphs No. 13

and 14 and submits that all the true facts with respect to the subsequent developments have been brought on record way back in the year 2016 as can be seen from paragraph 2A and therefore, there is no question of *malafides* or suppression as alleged by the Petitioners.

25. Learned counsel refers to the application for amendment and submits that since the material facts that had been mentioned in the affidavit of evidence relating to the increased bonafide requirement but which had not been pleaded in the plaint the same are sought to be brought on record by way of the amendment, as per the advice received from their current advocate. That the application has been preferred so that all the facts with respect to bonafide requirement are before the court for determination of the controversy. Learned Advocate refers to paragraphs No. 7, 8, 9 and 12 of the said application in support of her contentions.

26. With reference to the Trial Court order and in particular paragraphs No. 22 to 24, learned Counsel for the Respondent-Bank would submit that in view of the fact that subsequent events with respect to the 2nd and 3rd floor have already been brought on record in the evidence in the year

2008, and by the amendment in 2016, therefore, the question of suppression or there being malafide intention does not arise. She would submit that there is no question of Mr. Manzar's evidence being displaced by the proposed amendment as in addition to his cross-examination on 4th October, 2010 where Mr. Manzar has admitted in his cross-examination that the Bank recognizes 2800 sq. ft. area towards bonafide need, in his cross-examination on 18th December, 2010, he has stated that the Bank is in possession of an area ad-measuring 4141 sq. ft. on 2nd floor, 2391 sq. ft. on the 3rd floor and terrace of 1750 sq. ft. and by the proposed amendment the Bank only wants to include the enhanced need in the pleadings and therefore, that cannot be said to be with malafide intention or a suppression.

27. Learned counsel would submit that the petitioners have never challenged the amendment of 2016 which added paragraph 2A with respect to the subsequent developments that in May 1987 the Defendants No. 2 and 3 had surrendered the vacant possession of the 2nd and 3rd floors to the Bank and relinquished the tenancy rights in respect of the first floor without handing over possession of the first floor in consideration of accepting a smaller premises in the first floor in addition

to certain compensation and thereby the Bank has confirmed its prayer for decree of possession against the petitioners in respect of the first floor only. She would submit that this amendment was carried out in the year 2016 but the Petitioners are now seeking to challenge only the addition of further particulars with respect to the said amendment of the year 2016 as the same are being added in 2021 even though the same is only to elaborate the ground of bonafide need. Therefore, there is no question of any malafide intention as alleged by the Trial Court order nor or a case of displacement of evidence.

28. Learned Counsel would submit that the subsequent development was brought on record by way of evidence in the year 2008, the amendment was carried out in the year 2016 both of which went unchallenged but it is only when certain particulars with respect to the evidence already brought on record and amendment by including paragraph 2A already having been carried out that the petitioners are seeking to stall/delay proceedings by challenging the same. Learned counsel would submit that therefore, the petition deserves to be dismissed.

29. I have heard Ms. Eventa Gonsalves, learned Counsel for the petitioners and Ms. Snehal Modi, learned Counsel for the Respondent No.1 and with their able assistance, I have perused the papers and proceedings and considered the rival contentions.

30. It is not in dispute that the Bank's eviction suit is based on the ground of a bonafide requirement to which in the year 2016 an amendment was made, whereby paragraph 2A was added where it was recorded that in or about May, 1987 the Respondents No. 2, 3 and 4 had surrendered the vacant possession of the second and the third floors of the said building and also relinquished to the Respondent No.1-Bank, their tenancy in respect of the first floor accepting a smaller alternate premises on the first floor of the said building and certain compensation and pursuant to the said amendment, the Respondent No. 1-Bank had restricted its claim in the suit to first floor of the suit premises in the prayer clause of the plaint. The Respondents No. 2, 3 and 4 being the tenant only in respect of the first floor of the suit building, the Respondent No. 1-Bank confined the suit only for recovery of the first floor of the suit building from the Defendants there on the same earlier ground of bonafide requirement. These amendments were carried out in the year

2016 and the same were not challenged. It is recorded in the impugned order that 2016 amendments were done after the evidence of Mr. Manzar, PW 1 in the year 2008. The affidavit of Examination in chief dated 10th October, 2008 of Mr. Manzar, recorded the following with respect to the bonafide need of Respondent No. 1-Bank:-

“12. The plaintiff bonafide require the suit premises for their own occupation. The plaintiff want to accommodate their various Departments, Offices in the suit premises, as the said departments, offices are presently at different places and it is very inconvenient and causing much hardship to the plaintiff.

13. After the filing the suit the defendant No.1, 2 and 3 approached the plaintiff and offered, on certain terms, to surrender their tenancy to the plaintiff by handing over the vacant possession of the second floor and third floor of the suit property and relinquish the tenancy of the first floor without handing over possession of the first floor. The offer and proposal made by defendant No.1, 2 and 3 was partially accepted by the plaintiff in the Board's meeting dated 16-4-1987. I produce a true Extract of Board's Resolution dated 16-4-1987. The same is true copy /Extract of the resolution passed by Board of Directors of the plaintiff. It is signed by our Chairman and administrator Shri. M. Rehman. Its contents are true. Produced AS DOCUMENT No.10. The decision of Board of Directors was conveyed to the defendant No.1, 2 and 3 by plaintiff's letter dated 29-4-1987. The defendant No.1, 2 and 3 accepted the terms for surrender of tenancy by letter dated 28-5-1987. Thereafter, the defendant No.1, 2 and 3 handed over the possession of the second floor and third floor of the suit property to the plaintiff. I produce Xerox copy of the letter dated 28-5-1987. Original letters of both the said letters are misplaced and not traceable and only a Xerox copy of the letter dated 29-4-1987 an 28-5-1987 is available. Produced AS DOCUMENT NO.11.

14. After receiving possession of the 2nd and 3rd floor the plaintiff bank is using the said floors for their offices. On the second floor there are 4 cabins and one big hall. One cabin is for D.G.M. (H.O) Advances department. Second cabin is for D.G.M. (Legal). Third cabin is for Chief Law Officer. Fourth cabin is for current Auditors. The Hall on the second floor is occupied by various departments of the plaintiff i.e. [1] Legal Department with present working staff strength of 18 personnel; [2] H.O. Advances Department with present working staff strength of 13 personnel; [3] Reconciliation Department with present working staff strength of 11 personnel; [4] Dispatch Department with present working staff strength of 9 personnel; [5] Publicity Department with present working staff strength of 3 personnel; [6] Asset Recovery Department with present working staff strength of 3 personnel; [7] Guarantee Department with present working staff strength of 3 personnel; [8] Day Book Department with present working staff strength of 4 personnel. The total built up area of second floor is about 2372 sq.ft. The said eight departments presently working from the second floor of the suit building find the space very congested and inconvenient for working due to density of working staff and materials furniture and records kept thereat.

15. On the third floor of the suit there are three cabins and one big hall. One cabin is for A.G.M. and two cabins are for departmental Enquiry Officers. The Hall on the third floor is occupied by Human Resources Development (H.R.D.) Department and Staff Department. The present working staff strength of H.R.D. Department is about 26 personnel, including officers and subordinate staff. Apart of the staff strength considerable space is occupied for storing documents, stationeries Records and other materials required for day to day use. The area of the third floor is also approximately the same as second floor.

16. Even after getting possession of the second and third floor of the suit premises, the plaintiff still bonafide require the first floor of the suit premises for its own use for office purposes. Various departments of the plaintiff, working from the different places at present, are required to be accommodated at the first floor of the suit building as they are dealing with important

matter needed by management day to day. The details of requirement for such departments are as under.

17. Presently the Accounts Department of the plaintiff is at Uttam House, 4th floor, P.D'Mello Road, Carnak Bunder, Mumbai-9. The plaintiff want to accommodate this department on the first floor of the suit building. The present working staff strength of this department is 12 personnel including 4 account officers, 6 clerks and 2 peon. Space required for this departmental accommodation of staff and documents and records is about 200 sq. ft. Management Information System (M I S) Department of the plaintiff is presently at 4th floor of Uttam House. The department keeps and maintains all Data of all the Branches of the Bank pertaining to the deposits, loans, recoveries and all information data is maintained and daily position is reported to the management on day to day basis. The present working staff strength of this department is 5 personnel. This department plaintiff want to accommodate on the first floor of the suit building. The space required to accommodate the staff and records, documents and materials of this department is about 200 sq.ft. The plaintiff also want to accommodate the Shares Department of the plaintiff bank on the first floor of the suit building. Presently the share department is working from the 1st floor of the building at 69, P. D'Mello Road Bank-Branch premises. This Department keeps and maintains the records of all the 1,89,000 Share-Holders of the plaintiff bank. The documents are stored in 18 Godrej Storewel Cupboards. The premises at P. D'Mello Road is owned by Laheri Trust and is occupied by the plaintiff as their tenant. Laheri Trust have already filed eviction suit against the plaintiff bank, being TE & R Suit NO. 136/168 of 2000 and decree of eviction is passed against the bank on 29-11-2002. Presently the bank has filed and S.L.P. in the Supreme Court against the said decree, which is admitted and is pending. The present working staff strength of the Share Department is 4 personnel. The area required for accommodating the staff, documents and material of this department on the first floor of the suit building would be about 1000 sq.ft.

18. The plaintiff also want to accommodate Electronic Data Processing (E.D,P.) Department on the first floor of the suit

building. The present working staff strength of this department is 12 personnel. Presently this department is on the 4th floor of Uttam House. Computers software and Hardware Systems are maintained, developed and updated by this department for all the 53 bank-branches of the plaintiff all over the country and all departmental offices of the plaintiff. The area required for accommodating this department on the first floor of the suit building (staff, records and materials) would be about 1000 sq.ft.

19. The plaintiff also want to start a new department of the plaintiff bank to be called as Central Data Processing Unit (CDPU) Department. This department would manage centrally entire data, all kind of information and records required by the plaintiff, for banking, business, administration, departments, management other incidental purposes. Presently, this department is proposed to have 8 personnel. The space required to accommodate this department on first floor of suit building, staff, documents and material, would be about 400 sq, ft,

20. If decree for possession is not passed in favour of the plaintiff, the plaintiff would suffer greater hardship. But if decree is passed against defendants, no hardship would be caused to them.”

31. A bare perusal of the amendment application as well as the schedule of amendments sought to be brought in by way of the present amendment, in my view are nothing, but an elaboration of the ground of a bonafide requirement as contained in the above reproduced paragraphs. The proposed amendment seeks to explain the increased bonafide requirement of the Respondent No. 1 - Bank for premises of which the Petitioners were already aware since 2008. In my view, the Respondent No. 1- Bank is not seeking to bring in any new case or any new ground

but only an explanation of their increased need and an elaboration of the ground of a bonafide requirement. It is settled law that amendments can be allowed at any stage of the proceedings to determine the real controversy between the parties.

32. In this context, it would also be pertinent to set out the principles with respect to the amendment as summarized by the Hon'ble Supreme Court in the case of *Life Insurance Corporation of India Vs. Sanjeev Builder Private Limited and another*,¹ as under:-

(1) All amendments are to be allowed which are necessary for determining the real question in controversy provided it does not cause injustice or prejudice to the other side. This is mandatory, as is apparent from the use of the word "shall" in the later part of Order VI Rule 17 of the CPC.

(2) The prayer for amendment is to be allowed (I) if the amendment is required for effective and proper adjudication of controversy between the parties and (ii) to avoid multiplicity of proceedings, provided (a) the amendment does not result in injustice to the other side, (b) by the amendment, the parties seeking amendment does not seek to withdraw any clear admission made by the party which confers a right on the other side and (c) the amendment does not raise a time-barred claim, resulting in divesting of the other side of a valuable accrued right in certain situations.

(3) A prayer for amendment is generally required to be

¹ (2022) SCC online Supreme Court 1128

allowed unless (i) by amendment, a time-barred claim is sought to be introduced, in which case the fact that the claim would be time-barred becomes a relevant factor for consideration (ii) the amendment changes the nature of the suit, (iii) the prayer for amendment is malafide, or (iv) by amendment, the order side loses a valid defence.

(4) In dealing with a prayer for amendment of pleadings the court should avoid a hyper-technical approach and is ordinarily required to be liberal especially where the opposite party can be compensated by costs.

(5) Where the amendment would enable the court to pin pointedly consider the dispute and would aid in rendering a more satisfactory decision, the prayer for amendment should be allowed.

(6) Where the amendment merely sought to introduce an additional or a new approach without introducing a time-barred cause of action, the amendment is liable to be allowed even after the expiry of limitation.

(7) Amendment may be justifiably allowed where it is intended to rectify the absence of material particulars in the plaint.

(8) Delay in applying for amendment alone is not a ground to disallow the prayer. Where the aspect of delay is arguable, the prayer for amendment could be allowed and the issue of limitation framed separately for decision.

(9) Where the amendment changes the nature of the suit or the cause of action, so as to set up an entirely new case, foreign to the case set up in the plaint, the amendment must be disallowed. Where, however, the amendment sought is only with respect to the relief in the plaint, and is predicted on facts that are already pleaded in the plaint, ordinarily the amendment is required to be allowed.”

33. As can be seen, it is settled that in dealing with a prayer for amendment of pleadings a hyper-technical approach is to be avoided and the court is required to be liberal and all amendments which are necessary to determine the real questions in controversy are to be allowed.

34. In the case at hand, it is apparent that the amendments are only to explain or to elaborate on the ground of bonafide requirement which is already a ground taken in the plaint by the Respondent No. 1 from the very beginning and which was already part of the evidence since 2008. The amendments in my view are necessary to determine the real controversy between the parties as confined to the first floor pursuant to the amendment of 2016. Where the amendment is not necessary for determining the real question or controversy between the parties, then the leave to amend can be refused. Leave to amend will also be refused if it introduces a totally different or new or inconsistent case or changes the fundamental character of the suit or defence. In the case at hand, none of this is happening in as much as the ground of bonafide requirement as mentioned earlier has already been taken in the plaint from its very inception and some amendments in this direction were made in the year 2016 which went unchallenged. Besides the amendments are also part of

the evidence since 2008. In this regard, paragraphs 8, 9 and 10 of the Revision Application are usefully quoted as under :-

“8. In 1987 Applicants obtained possession of the 2nd and 3rd floor of the suit building. Applicants have been using the said 2nd and 3rd floors since then as more particularly stated hereinbelow. But Applicants requirement for premises has not been fulfilled and in fact over the years has been growing drastically. In the meanwhile due to enactment of the Maharashtra Rent Control Act, 1999, Applicants have had to hand over possession of premises let out to the Bank and accommodate the various departments in the suit premises or at the Bank’s Registered office at 78, Mohameddali Road. Thus, on further discussions Applicants have realized that several changes have occurred from the time Applicants have led evidence in the matter through their Chief Law Officer. Mr. Manzar Abbas and thus several subsequent events (even subsequent to filing of affidavit of evidence) are required to be brought on record.

9. Applicants business is growing and with technological advances and new rules being imposed changes are required to be effected from time to time. During the pendency of the suit the requirement that was mentioned in the affidavit of evidence filed by P.W.1- Mr.Manzar Abbas in and around 2005, was imminent at the relevant time. Thereafter more changes have been effected. All this is necessary to be brought on record as they form material particulars required to be pleaded in the plaint.

10. Applicants were therefore advised to prefer an application to amend the suit plaint. It is a settled legal position that the subsequent events in respect of bonafide requirement can be brought in at any stage of the matter. It is also a settled legal position that the

provisions of law applicable will be the Code of Civil Procedure, 1908, prior to its amendment in 2002 as the present suit was filed in 1986.”

35. The amendments schedule as mentioned earlier, elaborates the above facts in the case with respect to the bonafide need for the premises by the Respondent No.1-Bank; in my view it neither introduces any new or inconsistent case nor is there any fundamental change in the character of the suit or the defence. Leave to amend will also be refused where the effect of the proposed amendment is to take away from the other side a legal right accrued in his favour; in fact the amendments carried out earlier in 2016 and the proposed amendments in no way take away any legal right of the Respondents. In fact the Bank has amended the plaint earlier and confined its prayers only to the first floor of the suit building and in that sense no right can be said to have been taken away from the Respondents as the Plaintiff i.e. the Respondent No.1 has in fact restricted its claim. Leave to amend will also be refused where the application for amendment is not made in good faith. I do not see any ground to suspect the bonafides of the petitioners although the Trial Court has gone hammer and tongs trying to hold that the application for amendment by the Respondent No.1-Bank is malafide. That in my view is not the correct

approach. Mr. Manzar in addition to his cross-examination on 4th October, 2010 where he has admitted that the Bank requires 2800 sq. ft. area towards bonafide deed, in his cross-examination on 18th December, 2010 he has also stated that the Bank is in possession of an area ad-measuring 4141 sq. ft. on the second floor, 2391 sq. ft. on the third floor and the terrace of 1750 sq. ft. and by the proposed amendment the Bank only wants to elaborate the bonafide need in the pleadings. This in my view can neither be considered to be malafide or suppression or that Mr. Manzar's previous evidence would be displaced by the proposed amendment. To hold that view in my considered opinion would be erroneous. Further it is self evident that the amendment of the year 2016 where the fact that the Respondent No. 1-Bank had already received the possession of the second and the third floors and pursuant to which it had restricted its prayers only to the first floor was already on record and the present proposed amendment is only an elaboration of those events with respect to the need of the Bank for premises, which petitioners were already aware of since 2008 and that cannot be said to be malafide. Even the allegations of suppression would not hold water in the light of what had already been brought on record in the year 2008 and by way of amendment in the year 2016 and which has never been challenged by the

Respondents. I agree with the finding of the Appellate Court that the apprehension of the Respondents that allowing proposed amendment will displace the admission of Mr. Manzar, PW 1 given in the cross-examination is misplaced as the admissions given by Mr. Manzar about the extent of the Bank's need which was pleaded initially in the plaint, the area acquired after instituting the suit, the actual need is already part of the record and the Respondents can very well point out its effect and merit at the proper stage of the suit and therefore, in my view the impugned order needs no interference. Anyways the Petitioners will always get an opportunity to argue their case with respect to the amendments and as such no prejudice would be caused to the Petitioners, if the order allowing the amendments is sustained. The question of any hardship to the Petitioners as claimed or otherwise would also therefore not arise.

36. In view of the above discussion, I am of the view that there is no jurisdictional error nor any illegality or perversity in the impugned order dated 7th July, 2022 passed by the Appellate Bench of the Small Causes Court at Mumbai in Revision Application no. 53 of 2022 on Order below Exhibit No. 299 in R. A. E. Suit No. 5544 of 1986 allowing the amendment application on behalf of Respondent No. 1-Bank.

37. I am, therefore, not inclined to interfere with the findings of the Appellate Court. The Appellate Court has correctly exercised its jurisdiction and set aside the order of the Trial Court rejecting the application to amend.

38. The writ petition is dismissed. Parties to bear their own costs.

39. It is made clear that this Court has not given any finding on the facts/merits of the said suit. The reasons given herein are only for the purposes of deciding the present petition. All contentions/issues on the merits of the suit are left open to be decided at the trial of the suit, which the trial Court shall decide on its own merits in accordance with law.

(ABHAY AHUJA, J.)