

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

WRIT PETITION NO. 7407 OF 2022

Nagorao S/o. Marotrao Ramtekkar,
aged about 61 years, Occ.: Business,
R/o. Nehru Ward, Dhumreshwar Road,
Main Road, Ramtek, Dist. Nagpur.

.... **PETITIONER.**

// VERSUS //

Mr. Sanjeev S/o. Sitaramji Khandelwal,
aged about 58 years, Occ. Legal Practitioner,
R/o. Ramaleshwar Ward, Main Road,
Ramtek, Dist. Nagpur.

.... **RESPONDENT.**

Shri Sayed Sufiyan, Advocate for Petitioner.
Shri A.K.Neware, Advocate for Respondent.

CORAM : ANIL S. KILOR, J.
DATED : APRIL 11, 2023.

ORAL JUDGMENT :

1. Heard.

2. **RULE.** Rule made returnable forthwith. Heard finally by
consent of the learned counsel for the parties.

3. The order dated 28/02/2022 rejecting amendment application (Exh.127) filed by the petitioner, is under challenge.

4. Admittedly, after going through the amendment application, it is evident that the subsequent events, which occurred after recording of the evidence and which are relevant considering the counter claim filed by the landlord for eviction, were sought to be brought on record.

5. As per the proposed amendment, it is the case of the applicant that in the month of October, 2021 the defendant/ landlord inducted tenants in four shops. Undisputedly, the evidence was recorded prior to the said date.

6. As the landlord has filed a counter claim, claiming eviction of the petitioner/ tenant, it would be relevant factor, whether at the time of filing of the suit or during pendency of the suit, any alternate accommodation was available with the landlord, to satisfy his bonafide need which is claimed against the tenant.

7. The learned counsel for the respondent tried to canvass that the question as regards the said four shop blocks were put to the witnesses of the defendant in cross-examination and therefore, there is no need to allow the said amendment.

8. The Hon'ble Supreme Court of India in the case of *Life Insurance Corporation of India ..vs.. Sanjeev Builders Private Limited & Anr.*, reported in **2022 Live Law (SC) 729** has observed that the principles applicable to the amendments of the plaint are equally applicable to the amendments of the written statements. The Courts are more generous in allowing the amendment of the written statement as question of prejudice is less likely to operate in that event. The Hon'ble Supreme Court further held that the Court should avoid a hyper-technical approach, and is ordinarily required to be liberal.

9. In the peculiar facts of this case, the rejection of the application for amendment of the written statement, is contrary to the law and needs to be interfered with.

10. I have already observed that the evidence was recorded prior to inductment of the new tenants in the four shop blocks and as the said fact is relevant while deciding the counter claim of the respondent/ landlord, I am of the opinion that the amendment needs to be allowed by setting aside the impugned order. Accordingly, I pass the following order:

- i) The writ petition is allowed.
- ii) The impugned order dated 28/02/2022, passed below Exh.127 by the Civil Judge Junior Division, Ramtek, is hereby quashed and set aside and thereby application Exh.127 is allowed.
- iii) As the matter was fixed for judgment, after the amendment is carried out, the learned trial Court shall decide the suit within six weeks from today.

The Rule is made absolute accordingly. No order as to costs.

JUDGE

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