



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

WRIT PETITION NO. 15568 OF 2019

SHANTILAL S/O. MANIKLAL JAISWAL AND ANOTHER
VERSUS
SATISH @ CHANDU S/O. GANGARAM JAIKAR AND ANOTHER

...

Advocate for the Petitioners : Mr. S. J. Rahate
Advocate for Respondents No.1&2 : Mr. A. D. Kasliwal

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AND

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WRIT PETITION NO. 2767 OF 2021

ABHIJIT S/O. DILIP JAISWAL AND ANOTHER
VERSUS
SATISH S/O. GANGARAM JAIKAR AND ANOTHER

...

Advocate for the Petitioners : Mr. S. J. Rahate
Advocate for Respondents No.1&2 : Mr. A. D. Kasliwal

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CORAM : ARUN R. PEDNEKER, J.

DATE : 05th FEBRUARY, 2024

ORDER:

1. Heard.
2. In Rent Suit No.13 of 2012, both the impugned orders dated 08.07.2019 and 28.01.2021 are passed, as such, both these matters are taken up together for hearing.

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3. By the present petition, the petitioners are challenging the impugned order dated 08.07.2019, passed below Exhibit 50, by the learned 7th Joint Civil Judge, Junior Division, Aurangabad in Rent Case No.13 of 2012, refusing to grant amendment to the plaint. The application for amendment to the plaint was filed by plaintiff no.2.

4. Brief facts leading to the filing of the petition can be discussed as under:

A. The petitioners have instituted a Rent Case bearing No.13 of 2012 in the court of Civil Judge Junior Division, Aurangabad, on 03.03.2012 for eviction from the suit shop of House No.463, admeasuring 11 X 10 Feet, situated at Darzi Bazar, Bhaji Market road, Cantonment, Aurangabad. the suit is filed by the landlords against the defendants. The suit is filed on the ground of bonafide requirement. The suit shop is leased to the tenant / defendant at the rate of Rs.19/- per month. It is the case of the plaintiffs that the plaintiffs had 2 sons, who are unemployed and they need the suit shop for the purpose of their business. The eviction suit is also filed on the ground of sub-letting and alteration made to the suit shop. As such, when the defendants failed to evict the

suit shop on 30.11.2011, the suit was filed against the defendant under Section 16 of the Maharashtra Rent Control Act on the above grounds. The defendant resisted the said suit by filing the written statement. Thereafter, evidence was laid in the matter. After the evidence was over, the application was filed under Order 6 Rule 17 of the CPC seeking amendment after para 11. The plaintiff wanted to add the paras mentioned in the application. Perusal of the application would show that the plaintiff contended that the plaintiff no.1 was initially pursued the matter but later on for some reasons could not do it and, thereafter, the plaintiff no.2 is pursuing the matter and he has engaged another advocate.

B. Plaintiff No.2 intends to bring on record the documents relating to the earlier RCS No.831 of 2002 between the parties. In the said suit, the defendant no. 11, The Executive Officer, Cantonment Board, Cantonment, Aurangabad had specifically averred in his written statement that the defendant no.1 has erected, inside notified civil area, Aurangabad, the erection bearing House No.463. The erection is by way of steel frame structure on an area 110

Sq.Ft., which is required to be demolished. The notice was given on 02.11.2002 bearing No.463/24. The plaintiff also contend that subsequent to the recording of evidence on 04.07.2015, the property came to be transferred to him by virtue of inheritance on 04.09.2015. Thereafter, there was further documentation in terms of letter by the cantonment board dated 16.10.2017 for removal of unauthorised construction at house no.463 and also a complaint lodged to the MSEB and that the plaintiff wanted to bring in the above documents and plead and amend the plaint after the completion of the evidence.

C. The trial court on consideration of the application and response thereto dismissed the application of the plaintiff against which the present writ petition is filed by the plaintiff.

5. It is the contention of the plaintiff that the documents being the subsequent events should have been permitted thereto to be filed. He submitted that in letter and spirit of Order 6 Rule 17 has not been observed and that the amendment can be carried out at any stage of the proceedings. Only thing the court has to bear in mind that it would not

create injustice for the other side and that it is necessary for determining the real question in controversy between the parties.

6. Mr. S. J. Rahate, the learned counsel further submitted that that amendment should be refused only where the other party cannot be placed in the same position as if the pleading had been originally correct, but the amendment would cause him as injury which could not be compensated in costs.

7. Per contra, Mr. A. D. Kasliwal, learned counsel for the respondents submits that evidence of both the parties was closed and that the documents which was sought to be placed on record were earlier available with the plaintiff, some of which even before the filing of the plaint and the amendment is not required to decide the real controversy in issue. The present petition is filed is only to delay the process.

8. The learned counsel for the petitioners, relied upon the Judgment of this court in the case of **Baburao S/o Sahebrao Deshmukh Vs. Maharashtra Insecticides**, 2004 (2) Mh.L.J. 717.

9. The learned counsel for the respondents, relied upon the Judgment of the Hon'ble Apex Court in the case of **Revajeetu Builders & Developers Vs. Narayanaswamy & Sons & Ors.**, 2009 (6) All MR 986 (S.C.).

10. Having considered the rival submissions, it is required to be noted that Order 6 Rule 17 of the CPC deals with the amendment of pleadings and it is quoted below:-

“17. Amendment of pleadings.—The Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties:

Provided that no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial.”

11. It is a settled law that the court would be liberal in granting amendment, unless injustice would be caused to the other party, if, the amendment is allowed or that the amendment is not necessary to decide the controversy in issue. This court in the case of **Madhavrao s/o Nagorao Mirase and another Vs. Shankar s/o Kishan Mirase and others**, Writ Petition No.13936 of 2019, dated 31.01.2024, as regards the amendment of pleading has held as under:-

“11. Aslo, in the case of Ganesh Prasad Vs. Rajeshwar Prasad and others, 2023 SCC OnLine SC 256, while dealing with amendment of pleadings, the Hon’ble Supreme Court, at para 36, has observed as under:-

“36. In one of the recent pronouncements of this Court, in the case of Life Insurance Corporation of India v. Sanjeev Builders Private Limited and Another,

Civil Appeal No. 5909 of 2022 dated 01.09.2022, the position of law has been explained as under:

“70. (ii) 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 latter part of Order VI Rule 17 of the CPC.

(iii) The prayer for amendment is to be allowed

(i) if the amendment is required for effective and proper adjudication of the 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).

(iv) A prayer for amendment is generally required to be allowed unless

(i) by the 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 the amendment, the other side loses a valid defence.

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

(vi) 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.

(vii) 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 expiry of limitation.

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

(ix) 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.

(x) 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 predicated on facts which are already pleaded in the plaint, ordinarily the amendment is required to be allowed.

(xi) Where the amendment is sought before commencement of trial, the court is required to be liberal in its approach. The court is required to bear in mind the fact that the opposite party would have a chance to meet the case set up in amendment. As such, where the amendment does not result in irreparable prejudice to the opposite party, or divest the opposite party of an advantage which it had secured as a result of an admission by the party seeking amendment, the amendment is required to be allowed. Equally, where the amendment is necessary for the court to effectively adjudicate on the main issues in controversy between the parties, the

amendment should be allowed. (See Vijay Gupta v. Gagninder Kr. Gandhi & Ors., 2022 SCC OnLine Del 1897)”

12. *In the Judgment of the Life Insurance Corporation of India, which is also referred in the above Judgment of Ganesh Prasad (supra), the Hon’ble Supreme Court has held that the prayer for amendment is generally required to be allowed only 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, where the amendment may be justifiably allowed, where it is intended to rectify the absence of material particulars in the plaint. Ordinarily 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. Where the amendment is sought before commencement of trial, the court is required to be liberal in its approach. The Hon’ble Supreme Court has held that the Plaintiffs and Defendant are entitled to amend the plaint, written statement or file an additional written statement. It is, however, subject to an exception that by the proposed amendment, an opposite party should not be subject to injustice and that any admission made in favour of the other party is not withdrawn. All amendments of the pleadings should be allowed liberally which are necessary for determination of the real controversies in the suit provided that 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.*

13. *Thus, the law on the subject is that the court should be liberal in allowing the amendment in pleadings and as regards the written statement the court should be still more liberal in comparison to the amendment to the plaint....”*

12. Although, the amendment applications is to be liberally allowed, in the instant case, the entire evidence of parties is over and the notice issued in the year 2002 by the cantonment board cannot be introduced by amendment at the fag end of the suit. The suit is filed on 03.03.2012, and, the notice issued in the year 2002 was available with the plaintiff at the time of filing of the suit. So also, notice issued by the cantonment board for illegal construction long after the institution of the suit, may not be relevant to substantiate the cause of action for filing of the suit.

13. It is to be noticed that primarily the suit is for bonafide requirements of the plaintiff and illegal construction being carried out for the suit property prior to 2011, notice issued in the year 2017 may not be relevant as regards the cause of action in the year 2011.

14. I see no reason to interfere the impugned order passed by the trial court in not granting amendment at the fag end of the trial. Hence, Writ Petition No.15568 of 2019 is dismissed.

WRIT PETITION NO.2767 OF 2021

15. The basic facts in Writ Petition No.2767 of 2021 are same as in Writ Petition No.15568 of 2019, as both the petitions are arising out the same Rent Suit No.13 of 2012.

16. In the present petition, the petitioners are challenging the impugned order dated 28.01.2021, passed in application below Exhibit – 64, whereby the trial court refused to take the legal heirs of the deceased plaintiff no.2 on record. The petitioners are the legal heirs of the original plaintiff no.2 - Dilip Maniklal Jaiswal. The petitioner no.1 is the son and petitioner no.2 is the wife of deceased Dilip Maniklal Jaiswal. On demise of the plaintiff no.2 on 15.07.2020, application by the legal heirs of plaintiff no.2 was filed to bring them on record as legal heirs of plaintiff no.2. The defendants raised objection contending that the plaintiff are not the owners of the suit property, therefore, right to sue does not survive and, therefore sought rejection of the application. It was further contended by the defendants that the hearing of the suit was concluded and the matter was posted for Judgment and, therefore, the matter could not be entertained. The trial court relied upon Order 12 Rule 6 of the CPC, to pass the impugned order. Order 12 Rule 6 of CPC is quoted below:-

“Rule 6 – No abatement by reason of death after hearing - Notwithstanding anything contained in the foregoing rules, whether the cause of action survives or not, there shall be no abatement by reason of the death of either party between the conclusion of the hearing and the pronouncing of the judgment, but judgment may in such case be pronounced notwithstanding the death and shall have the same force and effect as if it had been pronounced before the death took place.”

17. The trial court by taking into consideration Rule 6 of Order 12 and held that the suit is filed in the year 2012 and posted for final arguments since 05.09.2019. In spite of sufficient opportunity to the plaintiffs they did not appear for final arguments. The arguments on behalf of the defendants are heard and by closing plaintiffs arguments, the matter was kept for final Judgment by passing order on 13.03.2020. However, due to the Covid-19 pandemic, the matter remained to be decided and meanwhile the application was filed to bring the legal heirs of plaintiff no.2 on record. The court held that since the matter is finally concluded and the order is posted for Judgment and, thereafter, the plaintiff had died on 15.07.2020, as such, the death of the plaintiff no.2 is after conclusion of the hearing and the matter is awaiting pronouncement of the Judgment. The trial court held that in view of provision given in Rule 6 of Order 12, the Judgment can be pronounced without bringing the legal heirs on record and as it would have the same force as if the Judgment was pronounced before the death.

18. The matter was reserved for Judgment on 13.03.2020 and plaintiff no.2 has expired on 15.07.2020 and the trial court pronounced its order at Exhibit – 64 on 28.01.2021. In any event, after such a prolonged period of reserving the matter for Judgment, the matter is required to be re-heard. No Judgment can be passed; based on the

argument, which have concluded, on 13.03.2020. Thus, it was the duty of the trial court to re-hear the arguments after a long lapse of time and to re-hear the arguments it is necessary to bring the legal heirs of plaintiff no.2 on record. No prejudice would be caused to the defendants if the legal heirs are brought on record.

19. In view of the same, the impugned order dated 28.01.2021, passed by the trial court below Exhibit – 64 rejecting the application to bring the legal heirs of plaintiff no.2 on record is set aside. The legal heirs of plaintiff no.2 be brought on record. Thereafter, the arguments in the matter be heard afresh and the matter be concluded as expeditiously as possible.

20. Thus, Writ Petition No.2767 of 2021 is allowed and disposed of.

[ARUN R. PEDNEKER, J.]

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