

ORDER BELOW EXH. 23 IN CIVIL SUIT NO : 244/2015

1] Perused contents of the application and say filed. The defendant and his advocate though called repeatedly till 1.30 noon since morning , absent. The advocate for the plaintiff argued this application .

2] This is an application under Order 6 Rule 17 of the Code of Civil Procedure,1908 for amendment of the pleadings in the written statement, contending therein that, after filing of the written statement, a notice is served on the suit property under the Maharashtra Municipal Corporation Act and in the said notice it transpired that, plaintiff has not deposited arrears of Rs. 91,621/- .

3] Further it is contended that, the defendant being in possession of the suit property and to avoid any penal action from time to time deposited the tax amount with Pune Municipal Corporation and that, the defendant is entitle to recover the same from the plaintiff. Therefore, defendant intends to file counter claim in this suit against the plaintiff, therefore, prayed for amendment in the pleading.

4] This application is resisted vide his say Exh. 24 and

contended that, standard rent application was filed in the year 1992 in which rent was fixed by this court at Rs. 200/- p.m. exclusive of education cess and permitted increases. This shows that, only to harass the plaintiff, this application is filed. The defendant never complained about the dues of Pune Municipal Corporation taxes and therefore, prayed to reject the application.

5] The object of amendment of pleading is to resolve the controversial issue between the parties, finally without giving rise to multiplicity of the proceedings. It is true that, it is settled principle that, all the amendments sought are to be construed liberally. But, the amendment sought must be relevant to resolve the dispute between the parties.

6] Under proviso to rule 17 of Order 6 of the Code of Civil Procedure, 1908, the Hon'ble High Court and Hon'ble Apex Court time and again made it clear that once the trial is commenced no amendment shall be allowed except the conclusion of the court that in spite of due diligence the party could not raise the matter before the commencement of trial.

7] In the instant case, the present suit filed is for eviction and possession of the suit premises. In para 3 of the plaint, the plaintiff has categorically mentioned that, monthly rent of the

premises was Rs. 381/- p.m. exclusive of taxes and cess of Pune Municipal Corporation . The defendant in the written statement Exh. 11 in para 5 admitted the contents of para 3 of the plaint.

8] Now when, the defendant admitted that, rent is Rs. 381/- exclusive of taxes and cess of Pune Municipal Corporation , I failed to understand as to where is the question of making payment of taxes to the Pune Municipal Corporation by the defendant.

9] Further record shows that, the defendant had preferred miscellaneous application 140/92 in which standard rent was fixed rs. 200/- exclusive of taxes . This also supports that defendant never was under obligation to pay the taxes.

10] If defendant is paying the rent to the Pune Municipal Corporation , then, why at the time of drafting of the written statement, he did not claim the said amount from the plaintiff by way of counterclaim. No reasonable explanation has been given by the defendant.

11] Under order 8 Rule 6A , no doubt, the defendant is at liberty to set up by way of counterclaim against the claim of plaintiff any right or claim in respect of a cause of action

accruing to the defendant against the plaintiff either before or after filing of the suit.

12] In the case in hand, the defendant shown the cause of action arose on 9/12/2015 for the first time when he deposited amount of Rs. 52,115 /- towards municipal taxes which the defendant intends to recover from the plaintiff with interest.

13] If the nature of the suit and admission of the defendant that the rent of the suit premises is Rs. 381/- excluding taxes and when the defendant in this application has contended that, from time to time he deposited tax amount with Pune Municipal Corporation , it is not known as to why in the written statement itself the defendant did not by way of counterclaim claimed the amount deposited from time to time and only by this application intends to prefer counterclaim in respect of alleged notice of Pune Municipal Corporation dt. 8/12/2015. This itself shows that, the defendant had waived or abandoned his claim at the time of drafting of the written statement and therefore, by way of cross suit he cannot claim the same relief.

14] The plaintiff has already filed his evidence affidavit. The issues are framed below Exh. 13, thus, trial has already been

commenced . The defendant has not shown due diligence to raise the matter before the commencement of trial therefore, the present application preferred in contravention of the provision of Order 6 Rule 17 and in view of dictum application deserves to be rejected. Hence, order .

ORDER

- 1] Application Exh. 23 stands rejected.
- 2] No order as to costs.
- 3] Matter to proceed further.

Pune
Date :20/10/2016

(Dr. J. H. Khomane)
3rd Addl. Judge, Small Causes &
Jt. Civil Judge Sr. Dn., Pune.

CERTIFICATE

I affirm that the contents of this P.D.F. File Judgment are same word for word as per original judgment.

Name of Steno :- B.D.Gaikwad (Higher Grade)

Court Name :- Dr. J. H. Khomane
3rd Additional Judge,
Small Causes Court & Civil Judge, Sr.
Sr. Divn. Pune.

Date of Order :- : 20/10/2016

Order. signed by
Presiding Officer on : 20/10/2016
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