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IN THE COURT OF SMALL CAUSES AT MUMBAI

**ORDER BELOW EXH.39
IN
RAD SUIT NO.565 OF 2018**

Mr. Mohammed Shamim Shaikh	...Plaintiff
Versus	
Mr. Mohd. Irfan Momin	...Defendant
AND	
Mr. Mushir Ahmed Shaikh and Ors.	...Respondents

**Coram :- D. S. Dabhade
Judge, C. R. No.17
Date : 19.03.2022**

ORDER :

1. This is an application for amendment in plaint. The plaintiff contended that in 2nd week of May 2018, the defendant threatened him to dispossess from the suit premises without following due procedure of law. Since 01.05.2014, he along-with his son respondent No.1 carrying on business of readymade garment in the name of “High Choice Hosiery”. He is in exclusive use, occupation and possession of the suit premises. After filing of the suit on 25.05.2018, he has taken out injunction application Exh.9. The defendant has let out the suit premises to him by accepting deposit amount of Rs.15,00,000/-. For taking forcible possession of suit premises from his “naukarnama” has been executed in the name of his son respondent No.1. Respondent No.2 is father of the defendant, had own suit premises from M.M.C. @ Rs.400/- per month. Then, by application dt. 07.07.2014, the suit premises has been transferred in the name of the

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defendant, but said fact has not been disclosed at the time of letting out the suit premises. By order dt. 29.05.2018, the Court had passed the order directing the parties to maintain status-quo. Despite of said order, on dt. 29.05.2018, respondent Nos.5 and 6 have taken the forcible possession of suit premises from his son, respondent No.1. He lodged complaint to M.M.C. and Shivaji Park Police Station against the respondents. He has also taken out Contempt Notice against the respondents. Accordingly, the plaintiff and his son respondent No.1 have been dispossessed from the suit premises without following due procedure of law. This incident has occurred during pendency of the suit, the plaintiff wants to bring said fact on record as per schedule, hence, he filed present application and same be allowed as prayed.

2. Defendant has filed reply Exh.46 and strongly opposed the application. He contended that after filing of injunction application Exh.9, the plaintiff has taken out several interim application Exh.10, 16 and 19 to which he has filed respective reply. That reply also be treated as reply to this application also. He has denied the business of plaintiff mentioned in the application and being layman executed “naukarnama” in the name of respondent No.1. He contended that his father was a tenant of MMC, he is paying monthly rent of Rs.657/- to Corporation. The plaintiff and his son were not concerned with the suit premises. He has denied the receipt of deposit amount. On 28.05.2018, on the basis of false contention, the plaintiff has obtained interim ex-parte order. He has denied taking of forcible possession of the suit premises, denied the complaint of the same.

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Respondent Nos. 3 to 6 are not proper and necessary party to the suit. He has denied the contentions raised in Contempt Application. He has prayed to dismiss the application with cost.

3. Respondent Nos. 3 to 6 have filed their reply Exh.53, respondent No.2 has filed reply Exh.66 and strongly opposed the application. They also reiterated the same contention which has been raised by the defendant in his reply Exh.46 and therefore, this reply has not been reproduced again. The plaintiff has filed rejoinder Exh.55, 56 and 69 to the reply of defendant and respondents. The plaintiff has filed written submission Exh.78 along-with list of authorities Exh.78-A.

4. Heard Id. Advocate for the parties.

5. By this application, the plaintiff wants to make certain amendment in Plaint in prayer clause under Order VI Rule 17 of Code of Civil Procedure. Now, it is necessary to see the provisions of Order VI Rule 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.

6. The above said provision is inserted by Act 22 of 2002 is coached in mandatory form. The Court has to allow amendment, but the jurisdiction to allow such amendment application is taken away, unless the conditions precedent are satisfied. Such as, the Court must come to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial. In the case in hand, yet the issues have not been framed. So, it is clear that the trial has not been commenced.

7. On perusal of record, it appears that the plaintiff has filed application Exh.9 on 25.05.2018 for temporary injunction. On dt. 29.05.2018, the Court has granted the status-quo order against the defendant and the same has been extended from time to time. In the suit, it is the contention of the plaintiff that he is in possession of the suit premises and defendant is trying to dispossess him without following due process of law. In the application, the plaintiff contended that during the pendency of the suit on dt. 29.05.2018, the defendant along-with respondent Nos.5 and 6 visited the suit premises and they have taken forcible possession of the suit premises from his son respondent No.1. This shows that the said alleged incident had occurred after filing of the suit. By way of this application, the plaintiff wants to bring said fact on record. Though, the defendant as well as respondents have denied the said fact in their reply, but being a subsequent event, the plaintiff can bring the said fact on record and the defendant can dealt with the same by filing their written statement. Therefore, it is just and proper to allow the application to decide the controversial dispute between

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the parties. Hence, I pass the following order.

ORDER

1. Application Exh.39 is hereby allowed.
2. The plaintiff is directed to carry out amendment within 14 days and submit the copy of amended plaint on record for the Court and other side.
3. Costs in cause.
4. Parties to take note.

(Dictated and pronounced in open Court)

**Mumbai.
Dt. 19.03.2022**

**(D.S. Dabhade)
Judge, C. R. No.17**