

Order Below Ex.60.
(Passed on 23.10.2019)

Perused the application and say. Heard both sides. Advocate for the defendant Shri. B.K Gandhi relied on cases as (1) *Sau. Venuibai w/o. Uttamrao Mahure -vs- Sandip+1, Writ Petition No.1207/2016, decided on 13/02/2018 by Hon'ble High Court Nagpur Bench*, (2) *Gurbakhsh Singh and others -vs- Buta Singh and Another, 2018 DGLS (SC) (Supreme Court)*, (3) *Rajaram Naik -vs- State of Goa and others, 2016(2) Bom.C.R. 378 (Bombay High Court).*, (4) *Janardan Ukarda Waghmare -vs- Ratanlal, Kashinath Gudekar, 2007(5) Mh.L.J. 536*, (5) *Shakuntala w/o Balasaheb Balsaraf -vs- Ramdas s/o Laxman Balsaraf and others, 2013(2) Mh.L.J. 760*, (6) *Krishnaji Shankar Moghe -vs- SitaramGangadhar Shende, 2003 (1) Mh.L.J. 233*, (7) *Union of India -vs- Rajkumar Agrawal, 2006(6) Mh.L.J. 765*, (8) *Balkrishna Ganpat Elwande -vs- Shankar TukaramSable and others, 2006(6) Mh.L.J., 224* and (9) *Dhanaji Kashinath Shendkar -vs- Khemchand Chawla and others, 2011(6) Mh.L.J. 629*. Per contra, advocate for the plaintiffs Shri. Sarada relied on *Vidyabai & Ors. -vs- Padmalatha & Anrs., 2009(4) Mh.L.J. 30*.

2. Advocate for the defendant submitted that the plaintiffs have filed the present suit for the eviction and possession on the ground of bonafide occupation as per the provisions of Section 16(1)(c)(g) of Maharashtra Rent Control Act, 1999 (hereinafter the Act). He submitted that the defendant has filed the written statement on 20/01/2018. The defendant has given the reply in respect of the pleading as to the

obstruction in the passage by keeping the material, chairs and stools. He submitted that the plaintiff has created obstruction. The entire flow of devotees to the shop of the defendant has stopped. As a result of which his total business has collapsed. The defendant has suffered huge loss. He submitted that in order to show that the plaintiffs are not entitled to claim the eviction of the defendant by his own acts in as much as the total passage is blocked. The said action amounts to an action of attempt to evict the defendant without following the due procedure of law. The subsequent events are happened after filing of the written statement. Further, the issue is framed as to Whether there is a obstruction created by the defendant in the passage. He submitted that in order to brought to the notice of the Court in respect of the act of the plaintiff to interfere with the peaceful possession and lawful enjoyment of the rented premises. Thus, he submitted that the proposed amendment are necessary in order to resolve the dispute between the parties.

3. Per contra, advocate for the plaintiffs strongly opposed to this application. He submitted that the proviso of O.6 R.17 of the C.P.C. specifically prohibits the application of amendment after the commencement of trial. He submitted that the trial has commenced. The plaintiffs have filed the evidence affidavit. He submitted that the proposed amendment which the defendants wants to incorporate in the written statement are in respect of the complaint of alleged nuisance against the plaintiff-trust. He submitted that the earlier application of the defendant filed under Section 29 of the Act has been decided by this Court and which has confirmed by Hon'ble Bombay High Court, Nagpur Bench in common order passed in Writ Petition No. 1806/2019 to 1817/2019. He submitted

that the installation of barricades is within the domain of plaintiff-trust in order to provide facilities to the devotees. The said complaint of the defendant in respect of the obstruction created by the plaintiff-trust has been finally decided. The entire focus of the proposed amendment is in respect of the barricades and other facilities provided by the plaintiff-trust. Moreover, the present application is not tenable due to the due diligence of the defendant. Thus, he submitted to reject the application.

4. I consider submissions of both advocates. Before considering the merit of the application, the proviso to O.6 R.17 of C.P.C., needs to be considered which reads as under -

“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.”

5. On plain reading of the proviso, it clears that the application of amendment shall not be allowed after the commencement of trial. During the course of argument, advocate for the plaintiffs submitted that the trial has already commenced. The plaintiffs have filed the evidence affidavit. The matter is pending for the cross-examination. In support of his submission he relied on *Vidyabai case* cited supra. Per contra, advocate for the defendant submitted that though the plaintiffs have filed the evidence affidavit, but witness of the plaintiffs has not entered into witness box and the documents have not exhibited in the evidence.

6. I consider submissions of both advocates. The legal position laid down in case of **Vidyabai** cited supra is not disputed. Hon'ble Apex Court has held the scope of commencement of trial. Hon'ble Apex Court has observed in para no.1 that “*the date on which the issues are framed is the date of first hearing. The provisions of Code of Civil Procedure envisage taking of various steps at different stages of the proceedings. Filing of an affidavit in lieu of examination-in-chief of the witness, in our opinion would amount to commencement of proceeding.*”

7. Further, in order to consider the scope and extent of commencement of trial, the legal position laid down in case of **Gububaksh Sing** cited supra needs to be considered. In this case, Hon'ble Apex Court has observed that “*if the proposed amendment neither changes the character and nature of the suit, then the amendment ought to be allowed.* In this case, Hon'ble Apex Court has considered the legal position laid down in case of **Abdul Rehman and others -vs- Mohd. Ruldu and others, 2012 (11) SCC 341** and held that “*if the amendment is necessary for deciding the real controversy between the parties provides that it does not cause injustice or prejudice to the other side, then such a amendment are to be allowed. The main purpose of allowing the amendment is to minimize the litigation and the plea that the reliefs sought by way of amendment was barred by time is to be considered in light of the facts and circumstances of each case. In that case two official witnesses were examined and the amendment was allowed after considering the necessity to decide the controversy between the parties.*”

8. To decide this application, I wish to consider the some

guidelines issued by Hon'ble Bombay High Court in the case of Bharat Petroleum Corporation Ltd. Vs. Precious Finance Investment Pvt.Ltd. 2006(6) Bom. Cr. 510

(i) The proviso to Order 6 Rule 17 is procedural and not a part of substantive law. It does not deal with the power of the Court and also does not specifically take away the power of the court to allow the amendment after the commencement of trial. It only empowers the court to reject the application if it comes to the conclusion that in spite of “due diligence”, the parties could not have sought the amendment before the commencement of trial.

(ii) The proviso to Rule 17 of Order 6 of the Code of Civil Procedure, in the present form and context, is directory and not mandatory. While dealing with the application under Order 6 Rule 17 courts can apply the principles/guidelines laid down by the Supreme Court and High Courts before the Amendment Act of 2002 came into force, if the amendment is found to be necessary for the purpose of determining the real questions in controversy between the parties even after the commencement of trial.

(iii) The commencement of the trial as mentioned in proviso to Order 6 Rule 17 of C.P.C. must be understood in the limited sense as meaning the final hearing of the suit, examination of witnesses, filing of documents and addressing of documents.

9. Here, in the present matter the plaintiffs have filed the evidence-affidavit. But the documents have not exhibited in the evidence. Further, the plaintiffs have not faced the cross-examination. Indeed, the evidence-affidavit of the plaintiff is on the record. But there is no as such

cross-examination taken by the defendant. Moreover, it is considerable to note that the main aspect while considering the amendment application is to decide that the necessity of proposed amendment in order to resolve the controversy between the parties. The present suit is filed for the eviction of the defendant on the ground of bonafide need of the plaintiffs. The defendant wants to bring the notice of the Court that the obstruction created by the plaintiffs-sansthan. No doubt, the application of the defendant under section 29 of the Act was rejected and which confirmed by Hon'ble High Court Nagpur Bench. But that application was in respect of the seeking relief to remove the obstruction.

10. According to the defendant, the plaintiffs are attempting to evict him by following these tactics. The present matter pertaining to the dispute of landlord and tenant. It is important to consider position of law that while deciding the amendment application, the Court is not expected to go into correctness and falsity of the case in amendment. It is upon the parties to prove their rival contentions and it will be definitively decided at the appropriate stage. To decide the dispute between them, the proposed amendment is necessary. Thus, I come to the conclusion that the main purpose of the amendment is to resolve the dispute between the parties. And the proposed amendment in the written statement are necessary to resolve the dispute between the parties.

11. During the course of argument, advocate for the defendant submitted that the defendant has filed written statement on 20/01/2018. He submitted that the proposed amendment is necessary on count of the subsequent events happened after filing of the written statement. He

submitted that the application filed under 29 of the Act was rejected on merits by this Court on 05/10/2018. He fairly submitted that the defendant has challenged the said order and which came to be confirmed by Hon'ble Bombay High Court, Nagpur Bench by common order dated 04/05/2019. He submitted that the defendant has attempted to take steps to remove the obstruction created by the plaintiffs-sansthan.

12. He submitted that after filing of the written statement, the subsequent events in respect of the creation of the obstruction at the hands of the plaintiffs has happened. Therefore, he submitted that the proposed amendment are necessary to resolve the dispute between the parties. In support of his submission, he relied on *Sau. Venuibai's case*, *Rajaram Naik's case*, *Janardhan Ukarda's case*, *Shakuntala w/o. Balasaheb's case*, *Krushnaji Mohe's case*, *Union of India -vs- Rajkumar's case*, *Balkrushna's case*, *Dhanaji Shendkar's case cited supra*. Per contra, advocate for the plaintiffs submitted that the nature of the proposed amendment is nothing but the reproduction of the application filed under section 29 of the Act and which has finally decided upto the Hon'ble High Court. He submitted that proposed amendment is not at all necessary to resolve the dispute between the parties. He submitted to reject the application.

13. I consider submissions of both sides. It is a matter of record that the application of the defendant filed under section 29 of the Act has confirmed by the common order of Hon'ble High Court dated 04/05/2019. Even, both parties have not disputed in respect of the said order. Now, the question remains as to the subsequent events happened after filing of

the written statement. It is a matter of record that defendant has filed written statement on 20/01/2018. The record shows that he has filed application under section 29 of the Act for removal of obstruction and which came to be rejected by this Court on merits. No doubt, by installing the barricades in the sansthan premises is within the domain of plaintiffs-sansthan. But at the same time it would not be proper to neglect the fact that the defendant is running his shop in the plaintiffs- sansthan premises. He is a tenant. According to him, the plaintiffs- sansthan has installed the barricades to stop the flow of the devotees from visiting to his shop. This is nothing but obstruction created by the plaintiffs-sansthan. Per contra, according to the plaintiffs the installing of the barricades is for the safety of the devotees. It shows that both parties are at dispute in this respect. Moreover, the fact of installation of the barricades and the obstruction has happened after filing of the written statement. No doubt, the defendant has challenged the order passed under section 29 of the Act. Indeed, it shows that he was busy in litigation. Thus, the act of installation of barricades is the event happened after filing of the written statement.

14. In the case of **Janardhan** cited supra, Hon'ble Bombay High Court has observed that *the amendment of the plaint in respect of the subsequent developments is necessary and such amendments are permissible.* In the case of **Shakuntala** cited supra, *it is observed that if the proposed amendment is necessary to decide the controversy between the parties, then it is to be allowed.* Further, in case of **Krushnaji** cited supra, Hon'ble Bombay High Court has observed that *the subsequent event happened after initiation of the proceeding sought to be introduced by way of amendment to the pleadings. And if such a events are in relation to the subject matter of the*

*dispute between the parties and necessary to decide the real controversy, then it is to be allowed. Further, in case of **Union of India** cited supra, Hon'ble Bombay High Court has observed that amendment can be permitted when the subsequent developments are required the adjudication of the certain issues involved in the suit. Further, Hon'ble Bombay High Court has observed that the Court should make all endeavours to avoid multiplicity of litigation and protraction of the trial in a suit. The purpose of allowing amendment is to set at rest the controversy in the same suit.*

15. Further, in case of **Balkrushna** cited supra, Hon'ble Bombay High Court has observed that “*if the proposed amendment is necessary to finally resolve the dispute between the parties, then such a amendment is to be allowed*”. Further, in case of **Dhanaji** cited supra, Hon'ble Bombay High Court has observed that *the amendment which is necessiated and is essential on account of subsequent events must be allowed. All the controversy between the parties to the suit in respect of the premises involved in the suit must be allowed to be adjudicated upon and for that purpose the amendment, if necessary, has to be allowed.*

16. As I mentioned supra, the proposed amendments are in respect of the subsequent events happened after filing of the written statement. The proposed amendments are necessary to resolve the dispute between both parties. Now adverting to consider the aspect of prejudice to the parties. By allowing the proposed amendment, the plaintiffs will not suffer the serious prejudice because the plaintiffs have every opportunity to make any consequential amendment in their pleadings. Further, the plaintiffs also at liberty to adduce the additional

evidence in respect of the facts brought about the proposed amendment. Thus, I think by giving an opportunity to the plaintiffs to make any consequential amendment and to adduce the additional evidence would suffice the purpose. At the same time, the costs needs to be imposed upon the defendant to compensate the plaintiffs. Thus, I pass following order.

Order

- 1] The application is allowed subject to costs of Rs. 500/-.
- 2] The defendant do carry necessary amendment within 14 days from today.
- 3] The plaintiffs-Sansthan is at liberty to make consequential amendment and adduce additional evidence.

Place : Shegaon.
Date : 23/10/2019.

Sd/-
(V. V. Kulkarni)
Civil Judge Junior Division
Shegaon, Dist. Buldana.

CERTIFICATE

I affirm that the contents of this PDF file are same word for words as per original.

Name of Steno : A.I. Shastri.
Name of Court : CJJD. Shegaon.
Upload date : 01.11.2019.