

Order Below Ex.63.
(Passed on 27.11.2019)

Perused the application and say. Heard both sides.

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) (g) of Maharashtra Rent Control Act, 1999 (hereinafter the Act). He submitted that the defendant has filed the written statement. It has been noted by the defendant that he has made attempts to find out the alternate accommodation but he could not get it. He submitted that the defendant has made various efforts to secure the alternate accommodation in the nearby locality or vicinity but it is impossible to obtain the premises. He submitted that the proposed amendment is necessary in order to determine the comparative hardship. Therefore, he submitted to allow this application.

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 comparative hardship. He submitted that the proposed amendment is not necessary. The premises in question is required for the plaintiff-trust for making arrangement to provide facilities to the devotees. He submitted that the premises is necessary for the security and safety of devotees. Under these circumstances, the aspect of hardship contended by the defendant is

totally irrelevant. Therefore, 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. Per contra, advocate for the defendant submitted that the proposed amendment is necessary in order to decide the suit on merits.

6. I consider submissions of both advocates. It is not disputed that the plaintiffs have filed the evidence affidavit. But the cross-examination has not commenced as such. Even the verification of documents is also remained. On the last date, one another application of the defendant has allowed on merits. Now, it has to be considered the necessity of the proposed amendment in order to decide the suit. The present suit has been filed under the provisions of Section 16(1)(g) of the Act. It states that –

(g) *That the premises are reasonably and bonafide require*

by the landlord for occupation by himself or by any person for whose benefit the premises are held or where the landlord is a trustee of a public charitable trust that the premises are required for occupation for the purposes of the trust.

7. The first part of the section shows that the requirement should be reasonable and bonafide and under the second part it is not necessary that the requirement should be reasonable and bonafide. The second part is applicable to the trust i.e. the trust who is the landlord. If the landlord is a trustee of a public charitable trust and the premises are required for the occupation of the trust, then the trust can seek the vacant possession of the premises. The second and equally important factor is that apart from proving that the premises requires reasonable and bonafide, he has to prove that he would suffer greater hardship if the vacant possession of the premises is not given to him in view of the provisions of Section 16(2) of the Act. Therefore, at the time of deciding issue as to the bonafide and reasonable requirement, there has to be consideration of the issue of comparative hardship.

8. As per the defendant, the aspect of comparative hardship needs to be examined by the Court. Per contra, the plaintiffs-trust has opposed on the ground that the premises are required for the arrangement of facilities to be provided to the devotees. The record shows that the issue of bonafide and reasonable requirement has been framed by the Court. But at the time of considering the issue of bonafide and reasonable requirement, there should be consideration of comparative hardship in view of the provisions of Section 16(2) of the Act.

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 issue of comparative hardship needs to be considered in view of the provision of Section 16(2) of the Act.

10. 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 definitely 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. Thus, 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 : 27/11/2019.

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 : M.G.Deshpande
Name of Court : CJJD. Shegaon.
Upload date : 30.11.2019.