

Order Below Application (Ex.84).

(Passed on 11.02.2022)

1. Present application is moved by the defendant U/o. 6 Rule 17 of C.P.C. for carrying out amendment in the WS.

2. By this application, the defendant is claiming that the plaintiffs have started demolition of upper floor of the building in which, on the ground floor, his shop is situated. It is claimed that on 18.09.2021, the laborers of the plaintiff have arrived on the first floor and they have removed all the articles and instruments of the Hospital in order to shift it at different places. It is also claimed that after that plaintiffs have removed doors and windows of the first floor of the building in question. Now, on basis of above act of plaintiffs, the defendant is claiming that the plaintiffs have undertaken the work on demolition of first floor of the building. The defendant further apprehends that the plaintiffs will put the debris of demolished floor in front of his shop to block his entry in the shop. It is further claimed that since, the roof will become open after the demolition, water will percolate in his shop and it will damage of the articles kept there. The defendant has further claimed that the plaintiffs will make holes in the roof and it will be not possible for him to carry on the business in the suit shop situated on ground floor. With such submission and as the event took place subsequent to institution of this suit, the defendant has prayed to allow his application and permit him to carry amendment and to include aforesaid facts in the Plaint.

3. The plaintiffs have contested the application filing their Say vide Exh. 85. In the Say, the plaintiffs have submitted that Issues are framed long back and the suit is now fixed for recording evidence. By

making such claim, the plaintiffs have tried to show that once the trial has commenced, the defendant can not move any application for amendment of the WS. The plaintiffs have further pointed out that the first floor of the building is not subject matter of this suit and therefore, the defendant is not supposed to raise any objection for the renovation work by initiated by them. It is also claimed that since the suit is for eviction and possession and the point of controversy between the parties is limited, the proposed amendment sought by plaintiff is not necessary for decision of the suit. Apart from this, the plaintiffs have also pointed out that the defendant is interested in prolonging the trial and therefore, he is in habit of moving such frivolous application one after another. With such submission, the plaintiffs have prayed to reject the application.

4. Heard both sides. Perused record.

5. Present suit is instituted for eviction of the defendant and possession of the suit shop. Thus, a limited Issue is involved in this suit. Further, as per claim of defendant, the plaintiffs have started renovation work on the first floor of the building in question. However, the first floor of the building is not subject matter of this suit. Since, the first floor of the building is exclusively own and possessed by the plaintiffs, the defendant has no locus standy to raise any question or objection for the work initiated on the first floor.

6. Further, this application was moved one month back on the claim that the plaintiffs have removed all the articles kept in on the first floor and they have also removed the doors and windows of that structure. Further, it is just anticipation of the defendant that the plaintiffs will demolish the first floor and it will result into collapsing of entire building.

Further, the defendant also anticipated that the roof of his shop will become open or the plaintiffs will make holes there and water will percolated into his shop and it will damage the articles kept in the shop. Further, as more than one month has been passed since starting to aforesaid work, it was possible for the plaintiff to make holes in the flooring of the first floor i.e. the roof of suit shop. However, till date no such allegations has been made by the defendant against the plaintiffs. This means the defendant is unnecessarily making such allegations against the plaintiffs which are based on his anticipation and on such allegations, he has made further claim that the plaintiffs are trying to ouster him from the suit shop.

7. Thus, after considering above facts, it appears that proposed amendment is not necessary for decision of the suit and the defendant has made unnecessary allegations against plaintiffs. Further, the proposed amendment do not seems to be necessary for adjudication for the suit on merit. If it is so, there is no need to permit the defendant to carryout the amendment and to include the facts narrated above in the WS. I do not find in any merit in the application and it deserves to be rejected. Hence, I am passing following order.

Order

Application (Exh. 84) is hereby rejected.

Sd/-

(J.R Ghadge)

Civil Judge Junior Division
Shegaon, Dist. Buldana.

Place : Shegaon.

Date : 11.02.2022.

I, *Rupesh Ashok Dandge*, Stenographer of C.J.J.D. & J.M.F.C. Court No.1, Shegaon affirm that the contents of this P.D.F. file order is correct word to word as per the Original Order.