

R.C.S. No.14/2016
Gajanan Maharaj Sansthan
-Vs-
Amar Arun Sharma
CNR No.MHBU07-000664-2016.

ORDER BELOW EXH. 236

[Passed on 21.08.2025]

1. This is an application filed by the defendant under order 6 rule 17 R/w. Section 151 of CPC to make the amendment in the written statement. Perused the application and say filed by the Ld. Counsel for the plaintiff at Exh. 238.

2. The defendant submitted that he has filed written statement long back. That the case is now fixed for hearing on application for production of documents. The witness for the plaintiffs has already filed examination in chief on affidavit and he is under cross examination. At the time of examination of the complete record, the suit is shown to have been filed under sec. 16(1)(c)(g) of Maharashtra Rent Control Act, 1999. The provisions are also examined in order to cross examine the witness. That under the provisions of Sec. 16(1) (g) it is contemplated that the possession can be claimed if the premises are reasonably and bonafidely required by the landlord. However, under sec. 16(2) of Maharashtra Rent Control Act it is provided that no decree for eviction shall be passed on the ground specified in clause (g) of Sub Sec. (1) if the court is satisfied that having regard to all the circumstances of the case including the question whether other reasonable accommodation is available for the landlord or the tenant, greater hardship would be caused by passing the decree than by refusing to pass it.

3. Defendant further submitted that as per the

decision of the Bombay High Court reported in the case of Bismilla bi Vrs. Mohd. Anwar reported in 2010(1) ALL MR 889, the ratio laid down is that the burden of proving greater hardship is lies on the tenant. Therefore, as the question is relating to the law, it is necessary for the defendant to make the pleading in the written statement in respect of the greater hardship in the light of provisions of Maharashtra Rent Control Act. That after the commencement of the trial, even though there is barrier to file the application for amendment, the Hon'ble court has got ample power to consider that it is a question of law and before commencement of trial, the defendant could not raise the matter in spite of due diligence. In these circumstances, it is essential for defendant to make the necessary pleading for the purposes of claiming the benefit under Sec. 16(2) of The Maharashtra Rent Control Act. No prejudice will be caused to the other side and as the question is necessary to be determined by the Hon'ble court and therefore the pleading is necessary while adducing the evidence. As such, the following be allowed to be added to the written statement as para No. 47-A.

"47(A)- The defendant further submitted that under the provisions of sub sec. 2 of Sec. 16 of Maharashtra Rent Control Act as proviso to Sec. 16(1)(g) the earlier provision is having overriding effect over the later. The sub sec. 2 of Sec. 16 of the said act is in the nature of an injunction operating against the court not to pass decree of eviction, if it is satisfied that the greater hardship would be caused to the tenant by passing the decree, than by refusing to pass it. The requirement is mandatory and once the satisfaction contemplated therein is reached, it leaves no choice to the

court but refuse to pass the decree of eviction. Thus, even if the court is satisfied that the landlord has made out a case of reasonable and bonafied requirement as contemplated by sec. 16(1)(g) of said Act, still the court shall refuse to pass a decree for eviction of the tenant if the satisfaction under Sec.16(2). That in the decision of Supreme Court reported in 2003(3) ALL MR 1141 (SC) is relied upon by the Hon'ble Bombay High Court in the case of Bismilla bi Vrs. Mohd. Anwar, reported in 2010(1) ALL MR 889, placitum B." That the premises of Shegaon Sansthan wherein the samadhi is situated consist of about 10 to 11 acres of land. That there are four to five buildings on the northern side of the temple after the gap of about 100 Ft. area. That these two buildings consists of 58 shop blocks out of which 18 were umbrella shops. Out of the said 58 shops, 46 shops are already taken in possession by the plaintiffs which includes 17 umbrella shops. Initially, after getting those shops vacated, in the eastern side building one footwear stand was created by joining three shop blocks together. That instead of shifting the counters in the vacant shops, the shop is again given on rent basis to the bank to install ATM. So also police chouki is established inside the said area of the shop. That by placing barricades in the complete open space, the strategy is being adopted so that no devotee who is also customer shall have access to the shop of the present defendant. That since last more than 8 years the shops are practically without any business because the customers are not allow to enter in the said area and special small lane of about 3 Ft. is created on the rear side of Western building and the compound wall. Even at present, in both the buildings all the shops are vacant and it was never occupied or utilized by the plaintiffs, which clearly shows that the requirement is not bonafide but

anyhow to evict the defendant.

4. That on the outer side of the temple area, there is a parking constructed which consist of 12 acres of the land. Various sheds have been erected in the said area for parking of the buses and the visitor's car and other vehicle. That even after accommodation of more than 1000 vehicles, the said area is so broad and wide that in the middle side more than 5 acres land is lying vacant.

5. That there is also Hattikhana land which consists of 10 acres of land which is also just adjacent to the Ambedkar Chowk, which is about 500 Ft. away from the temple area. That there were 15 shops in the said Hattikhana land. The plaintiff has got it vacated and all those 15 shops are lying vacant since last more than 5 years.

6. That on the southern side of the temple, there was locality of Matang Community. The said area more than about 2 acres of land is already acquired by the plaintiffs. That the houses of all the residents are already demolished and they have been shifted to Khalwadi area over the land owned by the plaintiffs. That more than thousands of acres of the land is available with the sansthan. That Anandsagar is developed in about 50 acres of land. That Anand Vihar consists of more than 10 to 12 buildings in room system, VIP Guests House and various constructions are in possession of Sansthan.

7. Despite the property which is available with the Sansthan, they are claiming the bonafide requirement from these defendant and intends to vacate the same so that it can be utilized by the relations of trustees.

8. That the bonafide requirement is also claimed on the ground that for security of the devotees, it is necessary to vacate the shop. The allegations are also made to the effect that the varandah situated on the front side of the shop was encroached by keeping the chairs and other articles. However as a matter of fact, the plaintiffs have installed initially plywood partition in between each and every shop in both the building so that the devotee or any person cannot utilize the varandah. Thereafter not satisfied with the said arrangement, the plywood partition are removed and still partition is installed of the pipes. As such, even the shop keepers cannot proceed towards another shop because of the partition erected by the plaintiffs. Not satisfied with this, the complete open space and the access is blocked by erecting the barricades and engaging the Sevadhari not to allow any devotee to proceed towards the southern side temple from the open space which is 100 Ft. wide. Had the purpose was to make the arrangement of security, the plaintiffs would not have blocked the complete access of devotees and create a small lane, wherein the chances of accidents are possible. However, plaintiffs have no concern with the devotees, they want only to satisfy their ego and as this defendant has not vacated the shop, only to teach the lesson to the defendant and like shop holders this lane is created.

9. Therefore, there is no evidence adduced by the plaintiffs in respect of vacant shop available with the plaintiffs and as such the case of bonafide requirement cannot be establish.

10. As against this since the year 2017 when the

barricades have been installed and access to the shop was completely close down by the plaintiff, the defendant is searching the shop even up to the distance of more than one farlang around the temple but there is no shop available which can be made available to the defendants. Because all the property are already acquired or already owned by plaintiff trust. That the railway station is situated at about 1 kilometer from the temple premises while S.T. Bus stand is about one half kilometer in between the railway up to the temple premises not the single shop is available even beyond the road. As such continuously the defendant is making the efforts to find of some suitable place but it is found to be impossible to get any premises to run the business by the defendant. If the decree for eviction is passed, it will caused greater hardship to the defendants than to the plaintiffs. That the plaintiff can provides any other area, nearby temple or even up to the substantial distance from the temple, wherein a defendants can establish his business. That the livelihood of the defendant and other shop keeper is on the basis of selling the small cutlery articles flowers, Prasad etc. /Therefore, all shop keeper are dependent on the devotee visiting the temple and therefore it is not possible to shift the business in any other area at the longer distance from the temple as the devotee are not visiting the other place in the town. As such the defendant and his family members have to suffer the starvation if they are evicted from the present shop. There is no obstruction nor vacation of the shop shall be utilized in order to develop the security system. On the contrary, CCTV camera can be installed by the plaintiff trust. Even as per the decision given by Additional District Judge, Khamgaon while considering the application for temporary injunction to restrain the plaintiff from taking the unlawful possession from

the defendant. It was observed that no expert opinion is taken by the trust for the purpose of claiming that the installation of barricades for vacating the shops are necessary for security purpose.

11. It is thus obvious that as per the provision of section 16(2) which is by way of proviso to section 16(1)(g) provides that if the requirement of the plaintiffs landlord is fulfilled, alternately, or if the greater hardship would be caused to the tenant if evicted, the court shall not pass the decree of eviction. The suit of the plaintiff is therefore liable to be dismissed on this ground.”

12. Hence, Ld. Counsel for the defendant prayed for allowing the application for proposed amendment.

13. The plaintiff strongly opposed the application and submitted that application as filed under order 6 rule 16 of CPC is not tenable. The jurisdiction under order 6 rule 17 of CPC can be exercised by the court only if the defendant establish due diligence as provided in the proviso to the said provision. In the judgment of Hon'ble Bombay High court in Sau. Anita Anant Paidalwar Vs. Suhas Manoharrao Umathe and other in writ petition No. 251/2024 decided on 13.03.2024 it is observed in para.

34. The application for amendment must disclosed the reason as to how the party applying for amendment was prevented from filing such application before the commencement of trial. This is the first aspect which the court has to consider as the proviso is couched in mandatory form. Unless this hurdles is crossed, the court is not entitled to look into the other aspect of the amendment. Thus, the

party applying for amendment after commencement of trial is to first plead as to why the said party was unable to apply prior to commencement of trial. If the court comes to the conclusion that in spite of the due diligence the party was prevented from applying for amendment, then only the other aspect as to whether the amendment is necessary for the purpose of deciding the real controversy in question will have to be looked into.

36. The Ld. Trial Court observed that though due diligence is not proved by the respondent/defendant, the amendment could be allowed since it is not introducing new plea but it is in the form of clarification. This observation of Ld. Trial court in spite of the findings that defendant failed to prove due diligence, is completely against the observation of the Apex Court in the case of Vidyabai (Supra). The jurisdiction of the court to allow such amendment is only if the party satisfied the court that in spite of due diligence the said party was prevented from filling application for amendment, before the commencement of trial.

14. The plaintiff further submitted that the application for amendment filed by the defendant on 23.10.2019 was allowed subject to cost of Rs. 5000/-. The defendant in application for amendment dated 23.10.2019 contended that the defendant had tried to search other premises and he will suffer the hardship if the decree for eviction is passed. This court in para No. 5 of the order on application dated 23.10.2019 observed that plaintiff filed the evidence affidavit however the cross examination was not started. Hence, the application was allowed subject to cost of Rs. 500/- and pleading regarding the comparative hardship was allowed to

be incorporated. Thereafter, the defendant moved application for amendment on 11.02.2022 which came to be rejected. The defendant is prolonging the trial of this suit and this court has observed in order dated 19.12.2024 that defendant is prolonging the matter instead of taking the cross examination of PW 2. This court further referred in order dated 19.12.2024 to the judgment of Hon'ble Supreme Court in Rameshwari Devi and other Vs. Nirmala Devi and taken note of the observation of Hon'ble Supreme Court. Even after the order of this court the defendant filed another application under order 11 Rule 14 of CPC and defendant continue to prolong the matter. The application filed on 26.03.2025 for adjournment by the defendant was allowed with observation that the said application is filed to prolong the matter. Hence, the cost of Rs. 500/- were imposed. The conduct of the defendant is such a that he is filling frivolous application with intention to prolong the matter. Hence, it is necessary to imposed the cost of Rs. 20,000/- on the defendant as per the principle laid down by Hon'ble Supreme Court in Rameshwari Devi Judgment. With this contention Ld. Counsel for the plaintiff prayed for rejection of the application.

15. Heard Ld. Counsel for the defendant and Ld. Counsel for the plaintiff.

16. The instant application for the amendment in written statement was filed after the commencement of the trial when the cross of the PW 2 is underway. The defendant did not cited any reason as to why he has not made the proposed amendment before the commencement of the trial. As per the judgment of Hon'ble Bombay High Court in Anita Anant Paldalwar (Supra) the reason must be disclosed in the

application for the amendment as to how the party applying for amendment was prevented from filling the such application before the commencement of the trial. As per the ratio laid down in above mentioned authority the defendant did not disclosed any reason in his application as to how the defendant was prevented from filling the such application before the commencement of the trial. It is a matter of record that defendant moved an application for amendment on 23.10.2019 which came to be allowed with cost of Rs. 500/-. The defendant could have incorporated the proposed amendment in the application dated 23.10.2019 as the proposed amendment is not related to the any events or incident occurred during the pendency of the trial.

17. The defendant sought to incorporate the hardship to be suffered by the defendant as contemplated under section 16(2) of Maharashtra Rent Control Act which provides that no decree for eviction shall be passed on the ground specified in clause (g) of sub section (1) of section 16 if the court is satisfied that having regard to all the circumstances of the case including the question whether other reasonable accommodation is available for the landlord or the tenant, greater hardship would be caused by passing the decree than by refusing to pass it. The proposed amendment is related to the section 16(2) of Maharashtra Rent control Act. It is well settled that the law need not to be pleaded. Therefore, there is no necessity for the defendant to pleaded the law under section 16(2) of Maharashtra Rent Control Act. Moreover, under the guise of section 16(2) of Maharashtra Rent Control Act various facts are tried to be incorporated by the defendant by way of proposed amendment. The pleading in the written statement have already covered the hardship to

be caused to the defendant if decree for the eviction would be passed. The issue framed at serial No. 12 that whether plaintiff are entitled for decree for eviction and possession of the premises covered the hardship faced by the defendant. The issue at Exh. 12 may also covered the provision under section 16(2) of Maharashtra Rent Control Act which defendant sought to incorporated in written statement. The due diligence has not been proved by the defendant while moving the instant application for amendment after the commencement of trial. Likewise there is no need for the defendant to plead the law as it is a cardinal principle of pleading that law is not required to be pleaded. Under such circumstances I do not find any merit in the present application. Hence, the application for amendment filed by the defendant is liable to be rejected. In view of above reason I am not inclined to allow this application and proceed to pass following order.

ORDER

1. This application is rejected.
2. Both party to take note of it.

Date : 21.08.2025.

[N. D. Meshram]
Civil Judge Jr. Dn. Shegaon,
Dist. Buldana.

I, *P. K. Ingle*, 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.