

**IN THE COURT OF SMALL CAUSES AT MUMBAI
(BANDRA BRANCH)**

**Order Below Exhibit-68
in
R.A.E. Suit No.251/629 of 2005**

1. Mr. Naresh Dhirajlal Shah (since deceased)
1(a) Pritesh Naresh Shah & others) Plaintiffs.

Versus

Smt. Usha Rajendra Shah (since deceased))
1. Mr. Rajendra Vadilal Shah & others) Defendants.

Learned Advocate Shri. J.S. Yadav, for Plaintiffs.

Learned Advocate Divyakant Mehta & Associates, for Defendants.

**Coram : Shri. S.G. Borlepwar
Judge, C.R.No.34(B.B.),
Date : 15th December, 2016**

ORAL ORDER :-

1. The plaintiff No.2 has filed this application for amendment in the plaint under Order VI Rule 17 of the Code of Civil Procedure.

2. In brief it is the contention of the defendant No.2 that the suit is filed for eviction of the defendant from the suit premises on the ground of bonafide requirements of the suit premises. During the pendency of the suit plaintiff No.1 expired and the original defendant is also expired. The legal representatives of the deceased are brought on record. The defendant No.1 is the legal representatives of the deceased original defendant. The plaintiff No.1 had filed evidence affidavit and he

was cross-examined. The defendants also filed evidence affidavit and the case is posted for cross-examination of D.W.1. The suit is on the ground of bonafide requirements and therefore, there is one issue of hardship. The defendants have suppressed immovable properties i.e. the commercial and residential premises owned by them from this Hon'ble Court. The plaintiff No.2 came to know in the month of October / November 2014 by one of the relatives of the defendants about immovable properties of the defendants. The defendants did not disclose about properties in the written statement not in the evidence affidavit. Plaintiff No.2 has collected the information under the R.T.I. Act by addressing application to the Building and Proposal Department regarding properties owned by the defendants. The plaintiffs have received documents in the name of the defendant No.1. The documents are building plan, property card and deed of conveyance dated 03/07/1996 between the defendant No.1 and one Mr. Shantilal Poonmchand Bhatt in respect of the properties bearing C.T.S. No.101, 101(1 to 2), Hissa No.5, Hissa No.3, Survey No.56 admeasuring 2245 square yards situated at Mogra Pada, Andheri (East), Mumbai.

3. The defendant has submitted the building proposal for construction of the building commercial and residential on the said property under case No. CE/8357/WS/AK/2004-2005 under the Architect Anil Kalgutkar therein. The defendant did not pursue the matter again. The defendant No.1 through his Architect reviewed the said proposal through his Architect Atul Shitut and Associates. Pursuing to the said building proposal, the defendant has constructed eight storey

commercial premises and with some residential premises.

4. The defendant himself is the builder and developer therefore, the application be allowed and the plaintiff be permitted to amend the plaint as per the schedule attached to this application.

5. The defendant No.2 filed say to the instant application at Exhibit-75 on 01/08/2015. In brief it is the contention of the defendant No.2 that there is no compliance of proviso under Order VI Rule 17 of the Code of Civil Procedure. The trial of the case is already commenced. The defendant No.2 has denied all the adverse contentions raised in the instant application. His Advocate sent the letter dated 21/04/2015 to the Advocate of the plaintiff Mr. J.S. Yadav for inspection of all original documents referred to and relied upon by the plaintiffs in their amendment application at Exhibit-68. The said letter is received by the Advocate of the plaintiffs. The plaintiffs inspite of giving inspection of the original documents sent a letter through his Advocate dated 03/07/2015 and refused to give inspection of the original documents.

6. The plaintiffs have not filed any documentary proof about the said properties. The property situated at Mogra Pada, Andheri (East), belongs to the father of the defendant and all the units in the property residential and commercial units occupied by the defendants. The plaintiffs have filed this application on false and baseless allegations without supporting any documentary proof. Therefore, the application be rejected.

7. The Plaintiff No.2 has filed rejoinder at Exhibit-74 on 03/11/2015 to the reply of the defendant No.2 filed at Exhibit-75. In

brief it is the contention of the plaintiff No.2 in the rejoinder at Exhibit-74 that all the contentions raised in the reply by the defendant No.2 are denied and all the contentions raised in the instant application are reiterated. It is also contention of the plaintiff No.2 in the rejoinder at Exhibit-74 that he is not supposed to support the contentions of his application by documentary evidence.

8. Following points arise for my determination. I record my findings thereof for the reasons mentioned below.

<u>Points</u>	<u>Findings</u>
1. Whether the plaintiff can be permitted to amend the plaint ?	In the Affirmative.
2. What Order ?	Application is allowed as per final order.

REASONS

9. I have heard both the learned Advocates.

As to Point Nos.1 & 2 :-

10. Perused record. Perused the plaint. The suit is filed for eviction of defendant from the suit premises on the ground of bonafide requirements. It is the contention of the plaintiff No.2 that the defendants have immovable properties and the said fact is required to adjudicate the issue of hardship. Therefore, the application be allowed. It is the contention of the defendant No.2 that no documentary proof is filed by the plaintiff and inspection of documents claimed by the defendant No.2 is refused by the plaintiff. I am of the considered view that at the time of filing this application it is not required to the

plaintiffs to file all the documents on record in respect of the alleged properties of the defendants and therefore, the instant application can not be rejected on the ground that the plaintiffs have not filed on record documents as alleged in the instant application.

11. It is the contention of the defendant No.2 that proviso of Order VI Rule 17 of the Code of Civil Procedure, is not complied with. Perused the Rozanama. It shows that the case was posted for cross-examination of the defendants on 21/01/2015. Perused Order VI Rule 17 of the Code of Civil Procedure. No doubt, the trial of suit has commenced, but it is the contention of the plaintiffs that he has received information about the properties under the R.T.I. Act in the month of December 2014. Hence, it appears to me that the proposed amendment is required to decide real controversy between the parties. Hence, I record my finding to Point No.1 in the affirmative and Point No.2 the instant application is allowed as per final order. Hence, the following order.

ORDER

1. The instant application is allowed as under.
2. The plaintiffs are permitted to amend the plaint as per the schedule annexed with this application within 14 days from the date of this order.
3. The plaintiffs are also directed to file on record the amended copy of the plaint and provide the same to the Court for Court record and to the defendants on or before next date.

4. Costs in cause.

Date : 15th December, 2016

(S.G. Borlepwar)
Judge, C.R.No.34, (B.B.)

Dictated on : 15/12/2016
Transcribed on : 02/01/2017
Checked & signed on : 04/01/2017

(S.G. Borlepwar)
Judge, C.R.No.34 (B.B.)