

**IN THE COURT OF SMALL CAUSES AT MUMBAI****ORDER BELOW EXHIBIT 19****IN****R.A.E. SUIT NO.1455 OF 2015**

Mrs. Shamsi Malek Malekpur

... Plaintiff

Versus

PEMS Investments Pvt. Ltd.

... Defendant

**Coram : P. D. Zambre,  
Judge, C.R.No.15,  
Date : 09.11.2017****ORAL ORDER :**

The plaintiff has filed this application for permission to amend the plaint vide Order VI Rule 17 of the Code of Civil Procedure, 1908 (for short 'the Code').

2. In short, it is application of the plaintiff that defendant in paragraph No.7 of its written statement denied that the plaintiff is landlady of the defendant. It is contended that the defendant has paid rent to the plaintiff up to certain period but in the written statement denied title of the plaintiff in respect of the suit premises. Denial of the title of the suit premises appears to be one of the new ground. Therefore, by this application, the plaintiff wants to amend the plaint and incorporated the said ground by amending and inserting new paragraph No.10A. It is contended that no harm and prejudice will be caused to the defendant if the application is allowed. On the contrary, if the application is rejected, it will create multiplicity of the proceeding. It is contended that the application is not made at the earliest stage as

the order below Exh.14 and 15 are challenged in Civil Revision which is dismissed on 03.12.2016. Therefore, the plaintiff has prayed to allow the application and prayed for permission to amend the pleading as prayed. The application is supported with letter by PEMS Investments Pvt. Ltd. along with cheque, acknowledgment receipt, agreement between the plaintiff and Yoosuf Lutfaally Khonjie and others.

3. Say of the defendant is called. The defendant has filed say at Exh.20 and denied the application. It is contended that the application is illegal and not maintainable and deserves to be dismissed. It is contended that the defendant in paragraph No.7 has denied the title of the plaintiff in written statement but i.e. the matter of record. The plaintiff can prove the same to the satisfaction of the Court. It is contended that it is not necessary to incorporate the amendment in the pleading due to defence taken by the defendant. Contention in respect of multiplicity of proceeding is denied. Contention in respect of dismissal of review is admitted and prayed to dismiss the application.

4. Heard both learned advocates for the parties. Perused paragraph No.7 of the written statement, it is contended that the defendant is not aware and did not admit the the plaintiff is landlady of the suit premises. In the circumstances, it appears that there is denial of title of the plaintiff to the suit premises which is one of the ground as per Section 114 of the Evidence Act. By this application, the plaintiff wants to incorporate that ground for eviction of the defendant. It is contention of the defendant that, there is no necessity of incorporation of amendment but unless there is pleading there cannot be proof. Otherwise that proof cannot be admitted for want of pleadings. In the

circumstances, incorporation of ground of denial of title by the defendant appears to be just, proper and necessary for determination of real question in controversy between the parties. If the application is allowed, the defendant has an ample opportunity to file written statement, to cross examine the witness on the point of title and lead evidence in respect of title or land-ladyship of the plaintiff in respect of the suit premises. In the circumstances, no prejudice will be caused to the defendant though amendment is allowed. On the contrary, if the application will be rejected, the plaintiff will remain unheard on the point of issue of denial of title by the defendant which is against the principle of natural justice. It will also create multiplicity of the proceeding and prejudice to the plaintiff.

5. The plaintiff has filed this application under Order VI Rule 17 of the Code. It contemplates allowing party to amend the plaint at any stage. If the Court feel it necessary to determine the real question in controversy between the parties. In the present suit, it appears that the defendant had denied the title of the plaintiff which is one of the ground for eviction of the defendant as it is settled proposition of law that if tenant denied title of the plaintiff, the plaintiff has right to evict the tenant as tenancy forfeits on the denial of title. In the circumstances, that pleading needs to be incorporated in the plaint. Hence, the application is liable to be allowed.

6. The plaintiff relied upon **Janardan Urkuda Waghmare V/s. Ratanlal Kashinath Gudekar, (Writ Petition No.2359 of 2007, High Court, Nagpur Bench)**. I have gone through the said ruling. In which it is held by the Honourable High Court that merit of the

amendment cannot be decided at the time of deciding application for amendment. In the present suit, the defendant contends that this amendment is not relevant. But, in view of this ruling that cannot be decided at this stage. The plaintiff relied upon **Franciso Patrico Rodrigues & ors. V/s. Aleixo Cipriano Albuquerque and ors., (2012 (2) LJSOFT 91 = 2011 (6) ALL MR 889)**. I have gone through the said ruling, in which it is held in paragraph No.4 that subsequent event should have to be permitted to be incorporated by way of amendment. In the present suit, as per plaintiff, after filing of written statement she came to know about denial of her title by the defendant. In the circumstances, that amendment should have to be permitted to be incorporated. The plaintiff has relied upon one more ruling i.e. **J.J. Lal Pvt. Ltd. and ors. V/s. M. R. Murali and anr., (AIR 2002 SC 1061)**. I have gone through the said ruling, in which the Honourable Supreme Court held that denial of title is the ground for eviction and that fact is necessary and material to be incorporated. Without that issue cannot be raised. In the present suit, it is admitted position that the defendant has denied the title of the plaintiff to the suit premises. In the circumstances, permission needs to be given to incorporate that ground by way of amendment. Hence, the application needs to be allowed. Considering the facts and circumstances, the costs shall have to be directed to follow the event. Hence, the order :

### **ORDER**

- 1) The application is allowed.
- 2) The plaintiff do amend the plaint as per schedule annexed with the application within 14 days and file amended copy on record within 14 days.

- 3) After filing of amended plaint, the defendant is at liberty to file additional written statement, if any.
- 4) The costs of the application will follow the event.

(P. D. Zambre)  
Judge, C.R.No.15  
09.11.2017

Dictated on : 09.11.2017  
Transcribed on : 16.11.2017  
Checked & signed on : 23.11.2017