

**IN THE COURT OF SMALL CAUSES, MUMBAI**

**ORDER BELOW EXHIBIT NO.63**

**IN**

**L.C. SUIT NO. 210/249 OF 2013**

New India Assurance Company Limited ]...Plaintiff.

V/s.

Edelweiss Financial Services Limited ]  
(Formerly known as Edelweiss Capital Limited) ]... Defendant.

Navdeep Vora & Associates, Ld. Advocate for the Plaintiff.  
DUA Associates, Advocate for Defendant.

**Coram :- Shri S. A. Gawai, Judge**

**C. R. No.20**

**Date : 03/03/2022**

**ORAL ORDER**

This is an application for permission to file additional written statement. The application was strongly opposed by the plaintiff by filing reply. Read the application and the reply. Went through the record of the case. Heard the Ld. Advocates for the respective parties at sufficient length.

2. The defendant contends that, after filing the written statement by him, the investigation officer of the municipal corporation greater Mumbai passed the order and fixed the rateable value of the suit premises. He challenged the said order by filing Appeal u/s. 217 of the Mumbai Municipal Corporation Act. The said Appeal is pending. The rateable value of the suit premises had not been crystallised for the period 2008 and 2010. The system of capital value was changed to capital value. The said rules were challenged in WP and the same were disposed off in the year 2019. The judgment

of the Hon'ble High Court was challenged before Hon'ble Supreme Court and same is pending. Therefore it is necessary to bring the said fact on the record.

3. The development of changing the system of rateable value to the system of capital value and challenging the same before the Hon'ble High Court and the Hon'ble Apex Court occurred after filing the written statement by the defendant. Therefore, he requires to file additional written statement. Thus, he prayed to grant him permission to file the additional written statement.

4. On the the other hand, the plaintiff contends that, the defendant was bound to pay the municipal taxes as per the leave and license agreement executed by him. However he failed to do so. He made representation against the assessment of the taxes of the Mumbai Municipal Corporation. He paid amount of taxes. Though the defendant challenged the action of MCGM could not succeed. Filing of the SLP by the MCGM is not the ground to delay the trial. Even if the amount of the taxes is reduced, the defendant can claim refund from the plaintiff. Therefore, according to him, the additional written statement is not necessary to be taken on record.

5. The plaintiff contends that, the written statement can be filed with respect to the averments pleaded in the plaint which are relevant for adjudication of the suit. The plaintiff in the present suit claimed the amount of taxes payable under the leave and license agreement. The defendant has no justified reason to withhold the contractual amount. The present application is filed with a view to

delay the disposal of the present case. Hence, he prayed to reject the application.

6. The Ld advocate for the defendant submits that, the facts as to change of the rateable value to the capital value and challenge of the assessment before the higher court and pendency of the dispute in that regard occurred after filing the written statement. Therefore, it is necessary to bring the said fact on record by additional written statement and the same is relevant to decided the controversy.

7. On the other hand the Ld Advocate for the plaintiff submits that, there is no ground for filing the additional written statement. The averments in the additional written statement even are not necessary for determination of the claims made by the plaintiff.

8. Having heard, I went through the record of the case. The defendant contends that, the system of assessment of the property taxes was changed. Therefore, it gave rise to filing Appeals and revisions to the various authorities and the Hon'ble High Court and the Apex Court. Thus, according to the defendant the assessment in regard to the property in dispute is not crystallised and finalised and the same has direct bearing on the claim made by the plaintiff. Therefore, additional written statement is necessary.

9. As per Rule 9 of Order VIII of the Code of Civil Procedure, 1908 (for short '**the CPC**'), no pleading subsequent to the written statement of defendant other than by way of defence or set of or counter-claim shall be presented except with the leave of the

court, but the court may at any time require a written statement or additional written statement from any of the parties and fix a time not more than 30 days for presenting the same.

10. The careful perusal of Rule 9 of Order VIII of CPC makes it crystal clear that, no pleading subsequent to the written statement other than by way of defence to set of or the counter-claim may be presented with the leave of the court. According to the defendant, the subsequent change of rateable value to the capital value gave rise to bring the said fact on record. The present suit is filed by the plaintiff for recovery of the amount of taxes payable by the defendant. The change of system of assessment and the challenged of the same before the Hon'ble High Court and Apex Court has the direct bearing upon the dispute. Therefore, the application will have to be allowed and the defendant will have to be permitted to file the additional written statement. Hence, I pass the following order;

**ORDER**

1. The application is allowed subject to costs of Rs.6000/- payable to the plaintiff on or before next date.
2. On payment of costs, the additional written statement of the defendant be taken on record.

Sd/-

Mumbai  
Date : 03/03/2022

(S. A. Gawai)  
Judge, C. R. No.20