

**IN THE SMALL CAUSES COURT AT MUMBAI**

**Order Below Exh.23**

**IN**

**R.A.E. Suit No. 807/1245 of 2009**

Smt. Kshama Haresh Mehta & Ors.

.. Plaintiffs

Versus

Saudagar Ganpat Naik

.. Defendant

Shri. N.H. Matani, Ld. Advocate for Plaintiffs.

Mrs. Vidya Bandekar, Ld. Advocate for the Defendant.

**Coram : Shri A.N. Sirsikar  
Judge  
Court Room No. 14  
23<sup>rd</sup> October, 2013**

**ORDER :-**

1. This is an application filed by the defendant for amendment of pleadings.

According to him, after filing of the written statement, some events have been occurred. Plaintiffs filed Municipal Application against him and other occupants for vacating the suit premises. Meanwhile, as the work of Metro Railway by M.M.R.D.A. is in progress, it has issued notice to occupants for vacating of the suit premises. Considering its condition, occupants challenged the notice issued by M.M.R.D.A. and M.C.G.M. by filing Writ Petition. Some orders have been passed in it, due to which occupants shifted in Govandi, Nahur. The Municipal Application filed by present plaintiffs has been allowed by the Court of Small Causes, Mumbai.

2. Considering the nature of the suit, the defendant wants to bring on record all these facts which are occurred subsequent to filing of the written statement. According to plaintiffs, the defendant has having knowledge of all these facts at the time of filing of the written statement. They have denied contentions raised in the application.

3. I have heard Ld. Advocate for both parties and also gone through the record of the case. Following points arise for my

determination and I recorded findings with reasons as under :-

Sr. No.	POINTS	FINDINGS
1)	Whether proposed amendment is necessary?	Affirmative.
2)	What Order?	Application is allowed.

**: REASONS :**

4. It appears from the record that present suit is filed on 16.06.2009 while the defendant has filed the written statement on 01.10.2009. Issues are framed on 11.02.2013. Copy of Judgment of Municipal Application No. 13 of 2009 shows that the same was registered on 16.09.2009. It means that the present defendant who was party to that application must have appeared thereafter in that proceedings. The order passed by the Hon'ble Bombay High Court is dated 06.07.2010. Thus, it can be said that facts sought to be inserted by way of amendment have been occurred subsequent to the filing of the written statement by the defendant. There is no question of causing any prejudice to plaintiffs, because amendment is in respect of the written statement.

5. Considering nature of dispute, the proposed amendment is necessary. Same would be helpful for determining the real controversy between parties. Even though affidavit in lieu of examination-in-chief is filed, but admissibility of documents is yet to

be decided and therefore, trial has not been commenced. In such circumstances, Point No. 1 is answered in the affirmative and I pass the following order.

**: ORDER :**

The application is allowed.

The defendant to carry out amendment as mentioned in the schedule on or before the next date and furnish copy of the amended written statement to other side.

(A.N. Sirsikar)  
Judge,  
C.R.No.14  
23.10.2013

Judgment dictated on : 23.10.2013  
Judgment Transcribed on : 11.11.2013  
Judgment Checked & Signed on : 12.11.2013