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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION No. 4414 OF 2009

Dattatraya Tukaram Shinde	... Petitioner
Vs.	
Shamrao Raghunthrao Karyakarte	... Respondent

Mr. V. S. Talkute, for the Petitioner.

Mr. Pritam P. Kiledar, for Respondent.

CORAM : A. S. OKA, J.

DATE : JULY 31, 2009.

PC :-

1. Heard the learned counsel appearing for the petitioner and the learned counsel appearing for the respondent. Considering the narrow controversy involved, the writ petition is taken up for final hearing.

2. The petitioner is the original plaintiff who filed a suit for eviction against the respondent under the provisions of the Maharashtra Rent Control Act, 1999. In the plaint, as originally filed, the suit premises have been described as comprising of one room admeasuring 9.29 Sq. meter (100 Sq. ft.). It appears that a written statement was filed by the respondent/defendant disputing

the description of the suit premises made in paragraph 1 of the plaint and contending that the respondent was a tenant in respect of an area of 350 Sq. ft. On the basis of said contention, an application for amendment was made by the petitioner. By the proposed amendment, he prayed for permission to incorporate a description of the suit premises in the alternative, by adding paragraph 2(A) to the plaint. The second amendment sought was by incorporating paragraph 4(A). By the said paragraph, it was contended that alternatively it may be treated that the plaintiff has filed the suit for possession against the respondent for recovery of the suit premises as claimed by the respondent.

3. By the impugned order, the learned Judge rejected the application by holding that if the amendment was allowed, there will be two descriptions of the suit premises in the plaint. The Court observed that petitioner has to choose either of the description and not the both.

4. After having heard the learned counsel for the parties, I find that there is no reason to deny permission to amend the plaint. The plain reading of the text of the proposed amendment reveals that a claim in the alternative was sought to be introduced in the plaint. In a suit it is permissible to make such a claim in the alternative. However, at an appropriate stage, the plaintiff is always required to elect. However, that is no ground to deny an amendment at the threshold. Hence, the petition must succeed and I

pass the following order.

ORDER

- (a) The impugned order dated 21st April 2009 passed below Exhibit 18 is quashed and set aside.
- (b) The application at Exhibit 18 is allowed. The amendment to be carried out within two weeks from the date of receipt of writ of this order by the trial Court.
- (c) It will be open for the respondent to file additional written statement within a period of four weeks from the date of service of copy of amended plaint on him.
- (d) All contentions raised by the parties in the suit are expressly kept open
- (e) Writ Petition is allowed in above terms.

[A. S. OKA, J.]