

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.

WRIT PETITION NO. 7273 OF 2015

Ashru s/o Malhari Pawar
Age: 56 years, occup, Agril.,
R/o Ghodegaon, Tq.Shrigonda,
Dist. Ahmednagar Petitioner

versus

Gangaram Bhanudas Mache,
Age: 61 years, occup. Agril.,
R/o Ghodegaon, Tq.Shrigonda,
Dist. Ahmednagar Respondent

Mr. Rahul R. Karpe, Advocate for petitioner
Mr. N.V. Gaware, Advocate for respondent

CORAM : SUNIL P. DESHMUKH, J.
29TH JULY, 2015

Oral judgment:

1. Rule. Rule made returnable forthwith and heard the parties by consent.
2. Petitioner who is original defendant purports to be aggrieved by order dated 20-02-2015 on Exhibit-226 in regular civil suit no. 220 of 2000, passed by Civil Judge, Senior Division, Shrigonda, District Ahmednagar.

3. Under Exhibit-226 the petitioner had sought certain amendments to his written statement by incorporation of paragraph number 16A referring to certain factual aspects originating in 1984 to date and then referring to certain provisions, particularly section 48, of the Code of Civil Procedure, 1908.

4. Learned counsel for petitioner submits that application Exhibit-226 has been considered by the court below hyper-technically saying that there is no sufficient reason for such a belated approach for amendments. He submits that, in fact, the prevailing position of law is not only accommodative but is also generous as far as amendment to written statement is concerned. He refers to citations relied on before the trial court, mainly, *Usha Balasaheb Swami vs. Kiran Appasao Swami*, reported in 2007 (5) *Mh.L.J.* 593. He submits, though evidence had been led in respect of the amendments sought, yet a technical difficulty may arise while considering the matter by the trial court since the pleadings may be considered short for want of requisite contents under the amendments. He submits that with this view, amendments have been sought.

5. Mr. Gaware, learned counsel appearing for respondent-original plaintiff submits that the amendment application is an attempt to procrastinate the litigation.

The petitioner is bent upon dodging hearing of the matter. He further refers to impugned order and contends that it was the defendant who was to begin with the evidence first but he avoided the same and the plaintiff had to adduce evidence first which has been so done. Even defendant's witnesses have also been examined. The petitioner has already argued the case and thereafter this application has been moved.

6. Looking at the amendments sought, it is clear that the petitioner-defendant is taking up a legal plea for which amendment may not be called for and the suit is not required to be dragged on any further on that count. The petitioner may be within his right if he argues the case with reference to the proposed amendments even without pleadings to that effect. If petitioner feels technical difficulty may arise and feels aggrieved by the same, he can always take up said point, if the matter is required to be taken in the appeal and it would be open for the petitioner to take up such pleas in the appeal.

7. Petition can be disposed of taking into account aforesaid considerations which learned counsel for respondent-plaintiff fairly does not dispute and as such petitioner's apprehension about technical deficiencies in the pleadings can be said to have been taken care of.

8. Under the circumstances, I do not think that any interference is required at this stage in the impugned order. It would be open for the petitioner to take up the contentions in the course of arguments with respect to the averments as appearing in paragraph no. 16A of the proposed amendments without incorporation of the same in the written statement. The respondent-plaintiff would not object to consideration of the same on the ground of technical difficulty that the same does not form part of pleadings. Those would also be open to be taken up by petitioner, in appellate proceedings.

9. With these observations, writ petition stands disposed of. It is expected that the petitioners shall avoid further protracting and prolonging of hearing of the suit.

SUNIL P. DESHMUKH, J.

pnd