

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD
WRIT PETITION NO.5561 OF 2014
WITH
CIVIL APPLICATION NO.2973 OF 2015

01) Prakash Mohanlal Agrawal,
Age: 48 years, Occ. Business,
R/o. Shop No. 12 & 13, Gauri Shankar Complex,
Main Road, Bodwad, Tq. Bodwad,
Dist. Jalgaon ..PETITIONER
(Orig. Defendant)

VERSUS

- 1) Ambika Trading Company,
Main Road, Bodwad, Tq. Bodwad,
Dist. Jalgon
- 2) Gaurishankar S/o Gangaram Agrawal,
Age: 83 years, Occ. Business,
R/o. M/s Ambika Trading Co.
Main Road, Bodwad, Tq. Bodwad,
Dist. Jalgaon
- 3) Dilipkumar S/o Gaurishankar Agrawal,
Age: 60 years, Occ. Business,
R/o. As above
- 4) Pradipkumar S/o Gaurishankar Agrawal,
Age: 52 years, Occ. Business,
R/o. As above ..RESPONDENTS
(Orig. Plaintiffs)

Mr S. B. Bhapkar, Advocate for petitioners;
Mr P. B. Gamot, Advocate for respondents

CORAM : N.W. SAMBRE, J.

DATE : 25th March, 2015

ORAL ORDER :

An application Ex.37 for amendment in the counter claim came to be rejected by the Joint Civil Judge Junior Division, Bhusawal, by order

dated 3rd April, 2014, passed in Regular Civil Suit No.133 of 2012. Thus, the present petition by the defendant.

2. By way of amendment, the petitioner sought to incorporate additional prayer in the prayer clause in relation to return of the earnest money, with interest at the rate of 18% per annum.

3. Learned Counsel appearing on behalf of the petitioner/defendant submits that the amendment is sought in the counter-claim by way of abundant caution, as according to him, in case of refusal of the relief of specific performance, the consequential relief of refund of the earnest money was sought. According to him, the relief claimed was in tune with the pleadings made in the counter-claim and should have been granted by the learned Trial Court.

4. While countering the above referred submissions, learned Counsel appearing on behalf of the respondents would urge that after filing of the counter-claim the petitioner/defendant had already amended the same. In addition to above, he would urge that the applications are filed by the present petitioner with an intention to delay the proceedings and, therefore, prayed for dismissal of the writ petition.

5. Having gone through the observations made by the Trial Court in

the impugned order and upon analyzing the submissions made on behalf of the parties, it is noticed that the petitioner has moved application under Order VI, Rule 17 of the Code of Civil Procedure for amendment of counter claim for the second time.

6. The Court below, having regard to the conduct of the present petitioner, has narrated reasons in the impugned order for rejection of the application as it noticed absence of appropriate explanation for moving such an application.

7. The learned Court below has also noted that the trial in the suit has already commenced.

8. In the light of above, in my opinion, no case for interference is made out. Writ Petition fails and stands dismissed with no order as to costs.

9. In view of dismissal of the writ petition, Civil Application No.2973 of 2015 does not survive and stands disposed of.

(N.W. SAMBRE, J.)

amj