

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.6066 OF 2014

Daud s/o Karim Pathan,
Age : 54 years, Occu. Business,
R/o and Taluka Paranda,
Dist. Osmanabad

..PETITIONER

VERSUS

The Municipal Council, Paranda,
Through Chief Executive Officer,
Nagar Parishad, Paranda,
T/q Paranda, Dist. Osmanabad

..RESPONDENT

Mr Ganesh J. Kore, Advocate for petitioner;
Mr A.S. More, Advocate for respondent

CORAM : N.W. SAMBRE, J.

DATE : 23rd February, 2015

ORAL ORDER :

By the present writ petition, the petitioner/original plaintiff seeks to challenge the order dated 5th July, 2014, passed by Civil Judge Junior Division, Paranda, below Exh.46, in Regular Civil Suit No.60 of 2012, whereby application filed by the respondent/defendant for amendment of written statement, came to be allowed subject to payment of costs of Rs.500/-.

2. The petitioner/plaintiff has filed the aforesaid suit seeking relief of perpetual injunction against the respondent/defendant – Municipal Council.

3. In the said suit, respondent filed written statement contending that, the averment made in the plaint that the amount of Rs.5,000/- has been deposited towards the earnest money on 23rd January, 2000, is correct.

4. The respondent/defendant sought correction of the date, i.e. “23rd January, 2009”, instead of “23rd January, 2000” in the written statement. Same was granted by the impugned order. As such, present petition.

5. Learned Counsel appearing on behalf of the petitioner/plaintiff has urged that the above referred correction/amendment ought not to have been granted by the Trial Court as the same amounts to withdrawal of an admission given by the defendant. According to him, once an admission has come on record, the same is not permissible to be withdrawn. Learned Counsel has relied on the judgment of this Court in the matter of **Armando s/o Santano Pereira & anr. vs. Jude s/o John D'souza & ors.**, reported in **2009 (4) Mh.L.J. 893**, so as to canvass that the admission given on record in the pleadings cannot be permitted to be withdrawn by way of amendment. What is permissible is only explanation

of the same during the course of recording of evidence. He further urged that the amendment ought not to have been granted by the Trial Court as the defendant – Municipal Council was not diligent while placing on record the written statement with the appropriate date, i.e. 23rd January, 2000. According to him, as the defendant was not diligent, it is not open for it to carry out corrections in its mistakes/admissions by tendering application for amendment to the written statement. In support of his contentions, he has placed reliance on the judgment of this Court in the matter of **Jayashree Subhash Kalbande & anr. vs. Bhaurao Nagorao Derkar & ors.**, reported in **2014 (4) Mh.L.J. 168**.

6. While countering the above referred submissions, learned Counsel appearing on behalf of the respondent has urged that the date “23rd January, 2000” mentioned in the written statement which was drafted by the Counsel was incorrect and the correction that is sought by way of amendment in the written statement is correction of the year and there will not be change in the date. He submits that the same cannot be termed as an admission as, according to him, original document in relation to the said date i.e. “23rd January, 2009” is very much produced on record for the purpose of appreciation of evidence and according to him, the same can be explained appropriately at the time of recording of evidence. In support of above referred contention, he has sought to place reliance on the observations made by the Trial Court in the impugned order and as such

prayed for dismissal of the writ petition.

7. Having gone through the contents of the impugned order, it is noticed that what is permitted by the Trial Court by way of amendment is correction of the year mentioned in paragraph 5 of the written statement, which is correctly required to be read as “23rd January, 2009”, instead of “23rd January, 2000”. It is also not in dispute that the original document in support thereof is already part and parcel of record of the Trial Court and the same can be appropriately explained during the course of recording of the evidence.

8. The defendant, in my opinion, has not sought any substantial amendment to the written statement so as to attract the law laid down by this Court in the matter of Armando (cited supra). In the said case, the parties to the proceedings have tried to amend the written statement extensively by replacing certain paragraphs. The said amendment which was sought to be replaced was with an intention to substitute the admissions given on record. It is required to be noted that the judgment cited on behalf of the petitioner in the case of Jayashree (referred supra) will also have no application to the present case as, in my opinion, no prejudice will be caused to the petitioner/plaintiff, if the impugned order granting amendment to the written statement passed by the learned Trial Court is upheld.

9. In view of above discussion, both the judgments cited on behalf of the petitioner, have hardly any application to the facts of the instant case.

10. In that view of the matter, no case for interference is made out. The writ petition being sans merit stands dismissed with no order as to costs.

(N.W. SAMBRE, J.)

amj