

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

WRIT PETITION NO. 7221 OF 2015

Arjun s/o Narayanrao Pawde and others Petitioners

versus

Madhavrao s/o Wamanrao pawde and ors. Respondents

Mr. Shailendra S. Gangakhedkar, Advocate for petitioner

Mr. Rajendraa Deshmukh for respondents no. 1 to 5

CORAM : SUNIL P. DESHMUKH, J.
21ST JULY, 2015

ORDER:

1. Heard learned counsel for the petitioners and learned counsel for respondents no. 1 to 5.

2. Petition has been moved by original defendants no. 1 to 4 against the order rejecting their request seeking amendments to written statement, passed by Joint Civil Judge, Junior Division, Nanded on 18-06-2015 on Exhibit-99 in special civil suit no. 43 of 2012.

3. Said special suit has been filed by present respondents no. 1 to 5 seeking specific performance of agreement dated 25-05-2007. Petitioners herein who are defendants in said suit have denied the claim under the plaint and have categorically stated that there is no agreement for sale executed by them.

4. Upon pleadings of the parties, it appears that relevant issues had been framed, *inter alia*, casting burden on plaintiffs to prove execution of agreement for sale. Evidence had been led by either side and the matter had been closed for arguments. It is being informed that, as a matter of fact, plaintiffs' arguments have already been over. It is thereafter, Exhibit-99 seeking amendments to written statement had been filed.

5. The cause for making application Exhibit-99, according to petitioners-defendants, has been reference in the arguments that there is no specific denial of execution of agreement to sell and, therefore, according to the petitioners, what was implicit has been tried to be made explicit by incorporating amendments to written statement about denial of execution.

6. Learned counsel for the petitioners submits that it is settled law that while granting amendment to written statement the courts have to be more liberal than doing so in respect of plaint. He refers for said purpose to a decision of the supreme court in the case of *Abdul Rehman vs. Mohd. Ruldu*, reported in 2012 DGLS (Soft.) 462 = AIR (SCW) 5419.

7. The trial court, while declining amendments, under the impugned order has observed thus;

“17. Admittedly in the present matter evidence of both the parties is closed. The advocate for the plaintiffs has completed arguments on 30-3-2015 and the matter was fixed for arguments of defendants. At this stage this application is moved by the defendants. In para 5 of the application it is contended by the defendants that after hearing arguments on behalf of the plaintiffs they were surprised and they gave second thought to the written statement. After giving second thought still they are of the view that there is sufficient denial regarding the agreement for sale pleaded by the plaintiffs. They are embarrassed and suffocated considering the arguments and submission raised on behalf of the plaintiffs. Thus according to the defendants they had no opportunity to file the present application before hearing the arguments on behalf of the plaintiffs.

18. It is true that the plaintiffs have raised point of specific denial during the course of argument. Whether the pleadings of the plaintiffs is specifically denied or not can be determined at the time of judgment. It is not the case of defendants that due to any reason the facts remained to be specifically denied. On the contrary they have come with a case that, there is sufficient denial regarding agreement for sale. The points raised during course of argument can be replied in the argument on behalf of the defendants. The pleading of both the parties was as it is on the date of argument advanced by advocate for the plaintiffs. Considering all above facts I have come to the conclusion that the application for amendment at fag end of the trial without showing due diligence is not maintainable. Hence I have answered point no. 1 in the negative. ”

8. After hearing learned counsel for petitioners, it appears that basic thrust of his argument is that what is implicit is sought

to be made explicit by incorporating amendments to written statement. If that be so, it would be open for the petitioners to meet with the same by other modes as may be possible, however, amendments at this stage may not be called for. Additionally, if the petitioners feel that they are aggrieved by rejection and lose an opportunity, it would be open for them to take up exception to it, if and when occasion for the same arises in appropriate proceedings.

9. Having regard to proviso to Order 6, rule 17 of the Code of Civil Procedure, 1908, I do not think that the trial court has committed any error and the reasons for which the request of the petitioners is declined which cannot be said to be not in tune with the factual position, calling for interference.

10. I am, therefore, not inclined to interfere with the impugned order. Writ petition as such stands rejected.

SUNIL P. DESHMUKH, J.

pnd