

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

WRIT PETITION NO. 8509 OF 2014

Sau Sujata Suil Lalwani [Jain]
Proprietor of M/s Raju Traders,
Age ____ years, occup. business,
Resident of : 1732, Agra road,
Dhule, District Dhule

.... Petitioner

versus

Maharashtra Krishi Udyog Vikas
Mahamandal Maryadit,
[A Government of Maharashtra
Undertaking], Registered under
the Companies Act, 1956,
Having registered office at Rajan House,
3rd Floor, Prabhadevi, Mumbai,

AND Divisional Office at
48, Sahakar Bhavan Housing Society,
Shaunagar, Jalgaon, District Jalgaon,
[Notice to be served on this address]

..... Respondent

Mr. Mukul S. Kulkarni, Advocate for petitioner
Mr. J.G. Toshniwal, Advocate for respondent

CORAM : SUNIL P. DESHMUKH, J.
DATE : FEBRUARY 2, 2015

ORAL JUDGMENT

1. Rule. Rule made returnable forthwith and with the consent of parties, heard finally.

2. The petitioner-original defendant, aggrieved by order on Exhibit-136 in Special Civil Suit No. 35 of 2007 dated 19-08-2014 passed by learned 3rd Joint Civil Judge, Senior

Division, Jalgaon, whereunder her application for amendments to written statement has been rejected, is before this court.

3. Under Exhibit-136, petitioner had requested for certain amendments as referred to by addition of paragraphs no. 11A, 11B and 11C to the written statement.

4. It is being contented on behalf of the petitioner that the amendments necessitated on happening of subsequent events. It is being submitted that criminal proceedings as can be gathered from the dates of decisions therein have culminated into acquittals of the petitioner which obviously are subsequent to the date of institution of the suit and further progress of the matter. It is being further submitted that the amendments with reference to the bank guarantee could be made only on its production pursuant to the order of this court in earlier writ petition no. 563 of 2014.

5. Learned counsel for the petitioner submits that the learned judge of the trial court has got swayed away by considerations which are not germane as far as amendments sought are concerned. It is being further submitted that from the tenor of the order impugned, it could be gathered that the learned judge had been in oblivion of the purport and spirit of the order passed by this court in writ petition no. 563 of 2014. As soon as the

documents were produced, copies of the same were obtained and amendments with regard to the same were sought.

6. On the other hand, learned counsel appearing for the respondent-original plaintiff submits that it cannot be said that the petitioner was unaware of the bank guarantee issued in favour of the respondent. As far as acquittals of the petitioner in criminal cases are concerned, they have no relevance whatsoever to the subject-matter of the suit. The petitioner wants to prolong the decision in the suit on some pretext or the other and the contentions in the application are with a view to harass the respondent and should not be given any credence to at all.

7. On perusal of the impugned order, as can be gathered from paragraph 11 of the same, it appears that the evidence of the parties may have commenced but it would hardly be an impediment, for, it cannot be said that the petitioner had knowledge of the events subsequent to and during the suit. Neither the dates on which the production of bank guarantee in the court pursuant to the order of this court in writ petition no.563 of 2014 had taken place nor the dates of decisions in criminal prosecutions are in dispute.

8. Looking at phraseology employed in Order VI, Rule 17 of the Code of Civil Procedure, 1908, amendments can be allowed at any stage of the suit albeit the court may decline to accede to the request for amendments in the absence of the due diligence. In the present case, the matter cannot be considered on technicalities, for, application for amendments obviously has been moved after the order passed by this court in writ petition no.563 of 2014 and production of the documents pursuant to the same. Further, since the dates of decisions in criminal proceedings are not in dispute, it is not that the events have not occurred after the stage of commencement of the trial. As such, it may not be considered that there is absence of due diligence.

9. I, therefore, deem it appropriate to grant application Exhibit-136. However, looking at that quite some time has been taken for moving the application, the petitioner shall not mind suitably compensating the respondent for taking him to this writ petition. In the facts of the case, I deem it appropriate to direct that Rs.5,000/- be paid by petitioner to respondent.

10. As such, writ petition is allowed. Impugned order on application Exhibit-136 in Special Civil Suit No. 35 of 2007 dated 19-08-2014 passed by learned 3rd Joint Civil Judge, Senior Division, Jalgaon, is hereby set aside and said application is

allowed, subject to petitioner paying Rs.5,000/- within a period of six weeks from today to the respondent which shall be condition precedent. Since the suit has been pending from 2007, after carrying out amendments in four weeks from today, it would be expedient that the suit is heard and disposed of as expeditiously as possible, preferably within a period of six months.

11. Rule is made absolute in terms of prayer clause (A) of writ petition, subject to stipulation of payment as above.

SUNIL P. DESHMUKH, J.

pnd