

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 1324 OF 2015

Shri Siddivinayak Food Pvt. Ltd., Pune
Registered Office, Sumit Plaza,
2nd Floor, Market Yard,
Gultekadi, Pune-37 & anr.

...Petitioners

versus

M/s. Gangabisan Murlidhar Maniyar
Partnership firm
through its Partner Harikisan Gangabisan
Maniyar, Age: 63 years, Occ: Business,
R/o. Dal Mandai, Ahmednagar & anr.

...Respondents

.....
Mr. N. C. Garud, Advocate for petitioners
Mr. P. S. Pawar, Advocate for respondent No. 1
.....

CORAM : N.W. SAMBRE, J.

DATE : 16th NOVEMBER, 2015

ORAL ORDER :

The petition is by the defendants in Special Civil Suit No. 204 of 2007 questioning the legality of the order passed below Exhibit-236 moved for amendment of the written statement, which was rejected by learned 3rd Joint Civil Judge, Senior Division, Ahmednagar on the ground that the amendment will change the earlier defence of defendant Nos. 1 and 2 and shall also take away admissions of defendant Nos. 1 and 2 in the written statement.

2. Learned Counsel for the petitioners-defendants, while

trying to make out the case for grant of amendment to the written statement, would urge that though trial in the suit has commenced, the Court has ordered recasting of issues on 30/08/2014 i.e. after recording of evidence of the plaintiff. According to him, the application for amendment to the written statement was moved on 13/09/2014 i.e. immediately after the Court has ordered recasting of the issues. He would then urge that the amendment is only clarificatory and explanatory in nature and has taken me through the contents, wherein the defendants have tried to clarify the relationship of plaintiff Meghraj Maniyar with defendant No. 2. He would then urge that the amendment also speaks formal denial of entitlement of the payment by the plaintiff.

3. While opposing the petition, learned Counsel for the plaintiff would urge that since the trial in the suit has already commenced, the Court below was right in rejecting the amendment application. According to him, the suit has reached at advanced stage and the amendment if granted, will result in change the nature of defence raised and also nullifies the admissions given.

4. Having bestowed my consideration to the submissions made by respective parties, it is not in dispute that the suit in question is for recovery of the amount arising out of transaction, for which initially issues were framed on 02/03/2009 and same were

recasted on 30/08/2014. It is after recasting of the issues, the petitioners-defendants moved the application for amendment to the written statement, which upon perusal would reflect in explanatory nature explaining the relationship of one Meghraj Maniyar with that of defendant No. 2. The other amendment which is sought, is also appears to be of formal denial but for the fact about availability of blank letter-pads containing signature of defendant No.2.

5. In my opinion, the amendment does not change the nature of defence that was raised but it is clarificatory and explanatory, which require to be granted. As such, the order impugned dated 21/11/2014 passed by 3rd Joint Civil Judge, Senior Division, Ahmednagar in Special Civil Suit No. 204 of 2007 below Exhibit-236 is hereby quashed and set aside.

6. For the reasons stated herein above, the application Exhibit-236 stands allowed, subject to payment of costs of Rs.5000/- (Rs. Five thousand only) to be paid by the petitioners to the respondents before learned trial Court within period of two weeks from today. Upon payment of costs, the petitioners will be at liberty to carry out amendment. The writ petition stands allowed in above terms.

[N.W. SAMBRE, J.]