

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 6319 OF 2014**

Shri Shivaji Manikrao Yadav

..Petitioner

Vs.

Shri Jinendra Bhau Dattawade

..Respondent

Mr. P. M. Arjunwadkar for the Petitioner

Mr. S. S. Shah for the Respondent

**CORAM : R. M. SAVANT, J.
DATE : 29th SEPTEMBER, 2015**

P.C.

1 The Writ Jurisdiction of this Court is invoked against the order dated 21-8-2014 passed by the Learned Joint Civil Judge Junior Division, Kurundwad District Kolhapur, by which order, the application Exhibit 17 for amendment of the plaint came to be rejected.

2 In so far as the amendment sought is concerned, by the said amendment paragraphs 5(a) and 6(a) were sought to be incorporated wherein the averments relating to the payment of Rs.86,500/- to the creditor of the Defendants in the Suit, were sought to be incorporated and set off as claimed by the Plaintiff was sought to be incorporated. The Trial Court has rejected the said application in view of the fact that the payment was made by the sugar factory in question i.e. Datta Sahakari Sakhar Karkhana Ltd. for the year 2008-2009 in respect of which notice was issued by the creditor of the Defendants

which letter was part of the documents produced vide Exhibit 79 by the Plaintiff. The said letter of the creditor is dated 27-11-2009 and therefore the Trial Court observed that the Plaintiff had knowledge about the said fact of the amount being deposited in the account of the Defendants for the year 2009, however has moved the instant application only in the year 2014. The Trial Court has also adverted to the fact that the Plaintiff had moved an application Exhibit 58 for amendment of the plaint on 16-11-2011 wherein the amendment sought vide instant application was not incorporated. The Trial Court having regard to the fact that the Plaintiff after the set off was seeking a decree for recovery of Rs.47,500/- held that the same would be barred by law of limitation. The Trial Court accordingly has rejected the said application by the impugned order dated 21-8-2014.

3 The Learned Counsel appearing for the Petitioner would contend that since there is a dispute as to when the Plaintiff acquired knowledge of the said fact of the payment made by the sugar factory to the Defendants as also the payment being made to the creditor of the Defendants by the sugar factory, it cannot per se be said that the amendment sought is barred by limitation.

4 In my view, it is not possible to accept the said contention urged by the Learned Counsel for the Petitioner in view of the fact situation which is prevailing in the present case where the Plaintiff was undoubtedly aware of the

payment made to the Defendants and thereafter the creditor of the Defendants being paid by the sugar factory, it is impossible to believe that the Plaintiff who claims to cultivate the sugarcane and supplied the same to the sugar factory and who claims that the amount has wrongly been paid to the Defendants for the sugarcane supplied is not aware of the amount paid by the sugar factory to the Defendants for the sugarcane supplied. Hence this is a case where the amendment sought can be said to be ex-facie barred by limitation. The instant case is therefore not a case where the issue of limitation can be kept open for adjudication in the Suit.

5 In that view of the matter, no case for interference in the Writ Jurisdiction of this Court is made out. The Writ Petition is accordingly dismissed.

[R.M.SAVANT, J]

CERTIFICATE

Certified to be true and correct copy of the original signed order