

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 8627 OF 2014**

B.G. Shirke Constructions Pvt Ltd

..Petitioner

Vs.

Bhagwan Dnyanu Thorat & Ors

..Respondents

Mr. S. C. Wakankar for the Petitioner

Mr. Ashok Tajane for the Respondent No.1

CORAM : R. M. SAVANT, J.

DATE : 11th FEBRUARY, 2015

P.C.

1 The Writ Jurisdiction of this Court is invoked against the order dated 21-7-2014 passed by the Learned Civil Judge Junior Division, Karad, by which order, the application Exhibit 153 for amendment of the plaint so as to increase the claim for damages and the consequential amendments thereto sought by the Plaintiff in the Suit came to be allowed, is taken exception to by way of the above Petition.

2 The Petitioner is the original Defendant No.1 in the Suit in question being Special Civil Suit No.61 of 2006 whereas the Respondent is the original Plaintiff. The Suit in question has been filed by the Plaintiff for recovery of damages of Rs.1,18,21,900/-. The said claim is made on the basis that the Defendants have excavated the mines more than what was permitted

by the agreement entered into between the parties. The Suit is also founded on the fact that the Defendants were not to excavate below 20 ft. but in fact have excavated upto the depth of 90ft, and thereby have caused damage to the suit property being land Gat No.184/9 admeasuring 1 H 89 Ares Pot Kharaba 13 Ares situated at Mauje Shirgaon, Tal Karad, Dist Satara. The Suit in question has also been filed for directing the Defendants to construct a boundary wall around the suit property. The application Exhibit 153 is founded on the document which was produced vide Exhibit 152 by the Defendants. It appears that an order came to be passed on Exhibit 127 by the Trial Court directing the Defendants to produce the documents relating to the excavation. The Defendants have pursuant to the said order produced a statement which was marked as Exhibit 152 showing excavation and the amount of royalty paid by the Defendants. It is the case of the Plaintiff that the said documents shows the excavation to the extent of 2,14,400 bras and therefore the amount comes to Rs.2,72,28,801/-. It is also the case of the Plaintiff that in the cross-examination of the witness of the Defendants i.e. Defendant No.3 Narendra Patil. It is revealed that the Defendants excavated and carried stones from the suit property to the tune of 88,000 bras and having regard to the price disclosed in the cross-examination i.e. Rs.339.60/- per bras, the Defendants have excavated and carried the stones from the suit property to the tune of Rs.2,98,94,800/-. It is therefore the case of the Plaintiff that it is on account of the subsequent development of filing of the document Exhibit 152 and the

evidence of the Defendant No.3 Narendra Patil that the cause for filing the application Exhibit 153 seeking amendment of the plaint arose.

3 The said application was opposed to on behalf of the Defendants by filing reply which was numbered as Exhibit 155. The Defendants opposed the application on the ground that the statement is a summary of the excavation done from all mines and is not restricted to only the excavation from the suit property. It was further the case of the Defendants that they have filed the documents relating to the payment of royalty, receipts and challans on record and therefore in so far as excavation is concerned, all the facts were to the knowledge of the Defendants. It was the case of the Defendants that they have not filed any new document on record pursuant to the order passed by this Court.

4 The Trial Court considered the said application Exhibit 153 and has by the impugned order dated 21-7-2014, allowed the said application. In so far as one of the objections taken by the Defendants namely that the statement is a summary of the excavation done from all mines and is not restricted to only the excavation from the suit property. The Trial Court observed that the said aspect can be gone into at the trial of the Suit. In so far as the objection founded on the fact that the documents were already filed, the Trial Court rejected the said objection of the Defendants by holding that the

cause for filing the application for amendment was the statement Exhibit 152 and the evidence of the Defendant No.3 which has come on record. The Trial Court lastly observed that since the Plaintiff has already claimed damages in the Suit as originally filed, what is sought by the amendment is only the enhancement of the said damages claimed on the basis of the material which has come on record during the pendency of the Suit. Since an objection was also raised on the ground of limitation, the Trial Court has kept the said issue open and in fact has allowed the said amendment from the date of the application. Hence in so far as the said aspect of limitation is concerned, the Defendants can be said to be protected. The Trial Court has also lastly observed that the amendment is necessary for a complete and effectual adjudication of the dispute between the parties.

5 The Learned Counsel appearing for the Petitioner Mr. Wakankar would contend that the Suit was at the stage of final arguments when the application for amendment Exhibit 153 came to be filed and unless the due diligence test was satisfied, the Trial Court could not have allowed the said application.

6 In my view, the said contentions urged on behalf of the Petitioner cannot be accepted. As indicated above, the Trial Court has accepted the case of the Plaintiff that the cause for filing of the amendment was the filing of the

statement Exhibit 152 as also on account of what has come in the evidence of the Defendant No.3 Narendra Patil. It is also required to be noted that by moving the application for amendment no new claim is sought to be made but what is sought is only the incorporation of the enhanced claim on the basis of the documents which have come on record which has revealed the rates per bras as well as for stones. In my view therefore, the amendment sought can be only said to be in furtherance of the claim which is already made in the Suit. It is well settled that an amendment which leads to a complete and effectual adjudication of the disputes between the parties as also results in avoidance of multiplicity of proceedings, is required to be allowed. In the instant case, the Trial Court has deemed it appropriate to allow the amendment by applying the said yardstick. Hence the impugned order does not suffer from any error of jurisdiction or any irregularity or infirmity for this Court to interfere in its Writ Jurisdiction.

7 It seems that since the above Petition was pending, the Petitioner/Defendant No.1 has not filed its additional Written Statement to the amended plaint on account of which it seems a no additional Written Statement order came to be passed on 4-12-2014. Though the said order is not under challenge in the above Petition, the Learned Counsel appearing for the original Plaintiff i.e. the Respondent No.1 Mr. Tajane on instructions of the son of the Plaintiff Vinod Bhagwan Thorat who is personally present in Court states

that the Plaintiff would have no objection to the Defendants being permitted to file their additional Written Statement. Statement accepted. The Defendants therefore to file their additional Written Statement within three weeks from date. Subject to the above, the Writ Petition is dismissed.

[R.M.SAVANT, J]