

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 10990 OF 2014

Jaibhavani Sahakari Pani Puravatha
Sanstha Limited, Male, Talukar Panhala,
Dist. Kolhapur

.. Petitioner

vs.

Vishwasrao H. Patil and ors.

.. Respondents

Mr. Chetan Patil for the Petitioner.
Mr. P.D. Dalvi for Respondent Nos.1 and 2.

CORAM : M. S. SONAK, J.
DATE : 16 JANUARY, 2015

P.C. :-

1] This petition is directed against the orders dated 14 October 2014 and 15 November 2014 made by the Cooperative Court and Cooperative Appellate Court respectively permitting respondent Nos.1 and 2 (original disputants) to amend their claim statement by way of raising a plea that their dispute as against the petitioner herein (original opponent No.2) is on the basis that the petitioner claims through respondent No.3 (original opponent No.1).

2] Mr. Chetan Patil, learned counsel for the petitioner submits that the petitioner had taken out an application under Order 7 Rule 11 of C.P.C. or principles analogous thereto, which was in fact

allowed by the Cooperative Court relying upon the averments in the original claim statement that the disputants are neither the members of the petitioner nor would they intend to so be. In the appeal filed, the said order was set aside, with a view to afford an opportunity to respondent Nos.1 and 2 to file reply. Taking undue advantage of such remand, the said respondents have applied for amendment of claim statement. Such amendment is neither necessary and in any case, the same will work out to severe prejudice to the petitioner, by way of dislodging the case set out by the petitioner in its application under Order 7 Rule 11 of CPC.

3] Having heard learned counsel for the petitioner and perused the record, in my judgment, no case is made out to interfere with orders dated 14 October 2014 and 15 November 2014, by which respondent Nos.1 and 2 have been permitted to amend their claim statement. This is not a case where respondent Nos.1 and 2 seek to withdraw any admissions made by them in their original claim statement. This amendment at the highest is for the purposes of removal of some lacunae in the pleadings. This amendment, at the highest is in the nature of raising an additional plea. The circumstance that the petitioner's application under Order 7 and Rule 11 C.P.C. might be affected, is certainly not a ground to deny

respondent Nos.1 and 2 opportunity to amend their claim statement. In any case, mere grant of leave to amend cannot and does not imply that the averments introduced by way of amendment have been accepted or that the same are true and correct. The petitioner will have full opportunity to meet with such amended pleadings. The circumstance that the amendment was applied for at a highly belated stage, is no reason to reject the plea for amendment. The amendment has been allowed at the stage prior to the framing of the issues or commencement of the trial. In any case, the prejudice on this account can always be compensated in terms of costs. Learned counsel for the petitioner is, however, right in submitting that the costs of Rs.300/- as awarded are too meagre in the facts and circumstances of this case.

4] In the circumstances, whilst no case is made out to interfere with the impugned orders, respondent Nos.1 and 2 by way of costs shall pay to the petitioner an amount of Rs.2000/- over and above the costs of Rs.300/- already awarded by the Cooperative Court.

5] With the aforesaid modification, the present petition is disposed of. There shall be no order as to costs in this petition.

(M. S. SONAK, J.)