

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.2928 OF 2015

Mohamed Hanif Noor Mohamed Radhanpura]
and Anr.] ... Petitioners

Versus

Sayyed Ahmed S/o. Abdul Hasan Sayed]
and Ors.] ... Respondents

Mr. R. S. Ghadge for Petitioners.

CORAM :- M. S. SONAK, J.
DATE :- APRIL 06, 2015

P. C. :-

1. This petition challenges Order dated 14/01/2014 made by the City Civil Court, allowing Chamber Summons No.620 of 2013 and permitting the Respondent Nos.1 to 5-Plaintiffs to amend the plaint.

2. The main objection raised by the Petitioners before the City Civil Court as also this Court is that the trial in the suit had already commenced by way of filing of Affidavit in lieu of examination-in-chief and therefore under the proviso to Order 6 Rule 17 of the CPC, such amendment could not have been allowed unless the test of due diligence had been satisfied by the Respondents.

3. The suit in the present case was instituted in the year 2001 i.e. prior to coming into force the amendment to Order 6 Rule 17 of the CPC. In such circumstances, it cannot be said that the proviso applies with all its rigor. That apart, amendment was applied for at the stage when cross-examination of the Plaintiffs/Plaintiffs' witness was yet to commence. The impugned order records that the amendment seeks to bring on record subsequent events and that the amendment is necessary for determining the real controversy in the suit. The judgments in the cases of *Vidyabai and Ors. Vs. Padmalatha and Anr.*¹ and *J. Samuel and Ors. Vs. Gattu Mahesh and Ors.*², relate to situation where the proviso to Order 6 Rule 17 was applicable, as the suit in question had been filed post-amendment to Order 6 Rule 17 of the CPC. In view of the aforesaid, there is no jurisdictional error in the making of the impugned order. However, looking to the circumstance that the suit is of the year 2011, the learned City Civil Judge is directed to dispose of the suit as expeditiously as possible and in any case within a period of nine months from today.

4. All parties to co-operate in the matter of expeditious disposal of the suit.

5. All parties to act on the basis of authenticated copy of this Order.

1 2009 4 Mh.L.J. 30

2 2012 2 SCC 300

6. Writ Petition is dismissed. There shall be no order as to costs.

(M. S. SONAK, J.)