

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.5953 OF 2013**

Sukumar Duryodhan Patil

...Petitioner

vs.

The State of Maharashtra & Ors.

...Respondents

Mr. Rajesh B. Parab for the Petitioner.

Mr. Nikhil Chavan i/b. V. D. Patil for the Respondent Nos.2 and 3.

CORAM : R. M. SAVANT, J.

DATE : 5th MARCH, 2015.

PC. :-

The writ jurisdiction of this Court is invoked against the order dated 7th September, 2012 passed by the learned 2nd Joint Civil Judge, Senior Division, Kolhapur, as also the order dated 1st January, 2013 passed by the same learned Judge. By the first order i.e. order dated 7th September, 2012, the application to amend the plaint Exhibit 46 came to be partly allowed. By the second order, the review application being Exhibit 54 filed by the Petitioner-original Plaintiff came to be allowed to the extent mentioned in the said order dated 1st January, 2013.

2] In so far as the application Exhibit 46 is concerned, a reading of paragraph 10 of the impugned order dated 7th September, 2012 discloses that the Plaintiff was permitted to add paragraph 1(C), 2(A), paragraph 3 and paragraph 7(B)(1), however, he was not permitted to delete paragraph 1 and 14 from the original plaint. However, in the

operative part, the Trial Court in clause (3) has permitted the Plaintiff to add paragraph 1(A), 1(C), para 2, 2(A), para 3 and was not permitted to delete paragraph 1 and 14 from the original plaint. The grievance of the Plaintiff was that though paragraph 7(B)(1) was allowed to be incorporated the same did not find a place in the said clause (3) and that though there is no paragraph numbered as paragraph 1(C), in the amendment application in the operative part in clause (3) there is a reference to paragraph 1(C). The Plaintiff, therefore, filed an application for review of the said order dated 7th September, 2012. The Trial Court allowed the said review application and permitted the Plaintiff to incorporate paragraph No.6, 7 and 7(B). However, there is no reference to deletion of paragraph 1(C) from the operative part of the impugned order in clause (3) as also inclusion of paragraph 7(B)(1) which was allowed to be incorporated and finds a mention in the first impugned order.

3] In my view, therefore, the interest of justice would be served if without relegating the parties to another round before the Trial Court, the second impugned order dated 1st January, 2013 is clarified, by observing that paragraph 1(C) which finds a place in clause (3) of the operative part is deleted and paragraph 7(B)(1) which appears in paragraph 10 of the first impugned order would stand included. Hence, the Plaintiff would be entitled to include paragraph 7(B) and 7(B)(1) in

the plaint and paragraph 1(C) would stand deleted from the first impugned order. The order dated 1st January, 2013 passed by the Trial Court would stand clarified accordingly. With the said observations, the Writ Petition is disposed of.

(R. M. SAVANT, J.)

wadhwa