

IN THE HIGH COURT OF JUDICATURE AT MUMBAI
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.3587 OF 2014

Devendra Manikrao Birajdar and others ... Petitioners
Vs.
Shankar Jadhav and another ... Respondents

Mr. Ashok B. Tajane for Petitioners.

CORAM : R. G. KETKAR, J.
DATE : 28TH JULY, 2015

P.C. :

Not on Board. At the request of Mr. Tajane, taken up in the production Board.

2. Heard Mr. Tajane, learned Counsel for petitioners at length.
3. By this Petition under Article 227 of the Constitution of India, original plaintiffs have challenged the judgment and order dated 01.08.2013 passed by the learned Civil Judge, Senior Division, Solapur below exhibit-74 in Special Civil Suit No.111 of 2010. By that order, the learned trial Judge rejected the application taken out by the petitioners, hereinafter be referred to as plaintiffs, under Order VI, Rule 17 of the Code of Civil Procedure, 1908 (for short 'C.P.C.') for amending the plaint.
4. In support of this Petition, Mr. Tajane strenuously contended that the learned trial Judge committed error in rejecting the application. He relied upon the decision of the Apex Court in the case of *Pankaja v. Yellappa*, (2004) 6 SCC 408 to contend that even the time barred amendment ought to have been allowed by framing issue to that effect. He relied upon the decision of the Apex Court in the case of *Sampat*

Kumar Vs. Ayyakanna, (2002) 7 SCC 559, and in particular paragraph 9 thereof, to contend that delay in filing the application for amendment cannot be refused. He also relied upon the decision of the Apex Court in the case of *Revajeetu Builders and Developers Vs. Narayanswamy and Sons*, 2009 (10) SCC 84 to contend that irreparable loss will be caused to the plaintiffs by rejecting the application for amendment.

5. I have considered the submissions advanced by Mr. Tajane. I have also perused the material on record and in particular paragraph 9 of the plaint as also the application exhibit-74 for amendment. In paragraph 5 of the impugned order, the learned trial Judge has observed that plaintiffs have specifically pleaded that the amount of Rs.13 lacs was paid in cash whereas by amending the plaint, the plaintiffs are seeking to plead that it was agreed to be paid in cash but in fact it was not paid. In my opinion, by the proposed amendment, plaintiffs want to withdraw the admission given in paragraph 9 of the plaint, which is not permissible. The reliance placed by Mr. Tajane on the decisions of the Apex Court in the cases of **Pankaja** (*supra*) and **Sampat Kumar** (*supra*) does not advance the case of the plaintiffs. The learned trial Judge has not rejected the application on the ground that the proposed amendment is barred by limitation. As far as the reliance placed on the decision of the Apex Court in the case of **Revajeetu Builders and Developers** (*supra*) is concerned, in paragraph 63, the Apex Court has laid down factors to be taken into consideration while dealing with applications for amendments, which reads as under:

“63. On critically analyzing both the English and Indian cases, some basic principles emerge which ought to be taken into consideration while allowing or rejecting the application for amendment:

- (1) whether the amendment sought is imperative for proper and effective adjudication of the case;
- (2) whether the application for amendment is *bona fide* or *mala fide*;

- (3) the amendment should not cause such prejudice to the other side which cannot be compensated adequately in terms of money;
- (4) refusing amendment would in fact lead to injustice or lead to multiple litigation;
- (5) whether the proposed amendment constitutionally or fundamentally changes the nature and character of the case, and
- (6) as a general rule, the court should decline amendments if a fresh suit on the amended claims would be barred by limitation on the date of application.”

6. In the present case, after considering paragraph 9 of the plaint as also the application for amendment, I am satisfied that the amendment is not bonafide. Judgment in the case of **Revajeetu Builders and Developers** (*supra*) does not advance the case of the plaintiffs. Hence, no case is made out for invocation of powers under Article 227 of the Constitution of India. Petition fails and the same is dismissed.

(R. G. KETKAR, J.)

Minal Parmb