

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 3356 OF 2015

Balkrishna A. Shetty

.. Petitioner
(Original Defendant)

vs.

Hemant H. Thakkar and ors.

.. Respondents
(Original Plaintiffs)

Ms N.S. Baig for the Petitioner.

Mr. N.S. Rodrigues i/b R & M Partners for the Respondents.

CORAM : M. S. SONAK, J.

DATE : 9 April, 2015.

P.C. :-

1] This petition challenges the order dated 10 February 2015 made by the City Civil Court rejecting the petitioner's Chamber Summons No. 2822 of 2014 seeking leave to amend the written statement.

2] In this case, the suit is of the year 1979. Therefore, the learned City Civil Court may not be entirely right in holding that the amendment cannot be permitted because the trial has already commenced, nevertheless, there are other sufficient reasons to sustain the orders made by the City Civil Court.

3] As noted earlier, the suit is of the year 1979, the written statement was filed by the petitioner-defendant on 11 January 1980. An application was made on 1 February 1995 for leave to amend the written statement, which was partly allowed by the Appeal Court on 20 August 1996. The suit had in fact been decreed in the year 2001. However, the Appeal Court by an order dated 23 August 2007 set

aside the decree and remitted the suit for fresh trial in accordance with law and also issued directions for expeditious disposal of the suit, since the suit was of the year 1979.

4] In the suit, the issue arose as to whether the parties were entitled to lead fresh evidence. Accordingly, the clarification was applied for and the Division Bench of this Court in its order dated 4 December 2009 clarified that the evidence of plaintiffs is to be recorded first and thereafter, in addition to the evidence which the defendant has already led, the defendant is permitted to lead additional evidence.

5] The Chamber Summons seeking leave to amend was taken out on 17 December 2014. The amendment seeks to bring on record certain events which are alleged to have transpired in the year 1988. In the affidavit, in support of the Chamber Summons, there is no explanation whatsoever for the gross and inordinate delay in seeking such amendment. Paragraph '6' of the affidavit merely states that if there is any delay in taking out the Chamber Summons, the same be condoned in the interest of justice.

6] The proposed amendment comprises three paragraphs. Paragraphs 2A and 2B concern, the payment of debt of Saraswat Cooperative Bank allegedly, made in the year 1988. Paragraph 2C makes an offer that the petitioner is willing and intends to pay Rs.2,40,000/- alongwith interest to the plaintiffs as per Agreement for Sale dated 6 April 1978 and that he shall deposit said amount in the Court, if permitted by the Court.

7] Looking to the nature of the proposed amendment, the first issue is whether the same is indeed necessary for the purposes of adjudication of the issues raised in the plaint. Further, there is no explanation whatsoever in the matter of gross and inordinate delay in taking out the Chamber Summons at such a belated stage. The contention of the learned counsel for the petitioner that the Division Bench of this Court, in its order dated 4 December 2009, having allowed the defendant to lead additional evidence, implies that leave was also granted to carry out necessary amendment in the written statement, cannot be accepted. No such leave was either applied for or granted at the stage when the appeal was disposed of or for that matter when the application seeking clarification was disposed of. Leave to grant additional evidence was granted, obviously in the context of pleadings as they stood on the said date.

8] In the aforesaid circumstances, there is neither any jurisdictional error nor perversity in making the impugned order. The impugned order consequently warrants no interference.

9] In so far as the offer to pay Rs.2,40,000/- is concerned, however, the petitioner is at liberty to make an appropriate application to the City Civil Court and such application, if made, within a period of two weeks from today, then the same be dealt with by the learned City Civil Court, in accordance with law and on its own merits. It is clarified that this Court has expressed no opinion upon the matter and all contentions of all parties in the matter of adjudication of such application are kept open for the decision by the learned City Civil Court.

10] With the aforesaid observation and liberty, the present petition is disposed of. The impugned order is not interfered with. In the facts and circumstances of the present case, there shall be no order as to cost.

(M. S. SONAK, J.)

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