

IN THE HIGH COURT OF JUDICATURE AT MUMBAI
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.4186 OF 2015

Jayant Vishwanath Haridas ... Petitioner
Vs.
Mumtaz Abddul Attar and another ... Respondents

Mr. Ajay A. Joshi for Petitioner.
Mr. Pradeep J. Thorat a/w. Ms Pratibha Shelke for Respondent No.1.

CORAM : R. G. KETKAR, J.
DATE : 30TH JUNE, 2015

P.C. :

Heard Mr. Joshi, learned Counsel for petitioner and Mr. Thorat, learned Counsel for respondent No.1 at length.

2. On the motion made by Mr. Joshi, respondent No.2 is deleted from the present proceedings. Rule. Mr. Thorat waives service for respondent No.1. At the request and by consent of the parties, Rule is made returnable forthwith and the Petition is taken up for final hearing.

3. By this Petition under Article 227 of the Constitution of India, original defendant No.1 has challenged the judgment and order dated 02.04.2015 below exhibit-56 in Regular Civil Suit No.44 of 2015 passed by the learned 3rd Joint Civil Judge, Junior Division, Pandharpur. By that order, the learned trial Judge allowed the application made by the respondent No.1 – original plaintiff under Order VI, Rule 17 of the Code of Civil Procedure, 1908 (for short 'C.P.C.') for amending the plaint thereby incorporating paragraph 4(A) in the Suit.

4. In support of this Petition, Mr. Joshi submitted that the learned trial Judge has not considered the averments made in the Suit as

instituted by the respondent No.1 and the proposed amendment. The learned trial Judge has also not considered the controversy raised in the Suit and without considering the subject matter of the Suit, in paragraph 5, observed that the proposed amendment will not change the nature of the Suit nor relief claimed in the Suit. This observation is made without considering the case made out in the unamended plaint and the proposed amendment.

5. During the course of hearing of this Petition, on the last occasion, suggestion was made to Mr. Thorat to consider setting aside this order by consent and remanding the matter for deciding it afresh. Mr. Thorat, upon taking instructions from respondent No.1, states that the impugned order may be set aside and the application may be directed to be considered afresh.

6. In view thereof, by consent of the parties, impugned order is set aside and application at exhibit-56 is restored to the file of the trial Court. The learned trial Judge will consider and deal with all the submissions and pass appropriate order in accordance with law. All contentions in that regard are expressly kept open. Order accordingly.

(R. G. KETKAR, J.)

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