

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.5374 OF 2015

Smt. Prafulla Jaya Shetty and Ors.] ... Petitioners

Versus

Manohar Jaya Shetty and Anr.] ... Respondents

Ms. Rajkumari C. Nichani for Petitioners.

Mr. Chirag Moily a/w Mr. Deepak Shukla i/b M/s. Vinod Mistry Co. for Respondents.

CORAM :- M. S. SONAK, J.

DATE :- JULY 10, 2015

P. C. :-

1. Rule.

2. With the consent of and at the request of the learned Counsel for parties, Rule is made returnable forthwith.

3. This petition challenges order dated 06/02/2015 made by the City Civil Court, Mumbai, allowing Respondents' Notice of Motion No.3767 of 2014 and directing the Petitioners herein to strike off certain portion from paragraph no.13-A of the amended plaint, on or before the next date.

4. Heard the learned Counsel for parties and perused the record. In my judgment, the impugned order is unsustainable and is required to be set aside. The record indicates that the Petitioners who are the original Plaintiffs in S.C.Suit No.4831 of 2011, vide Chamber Summons No.388 of 2014, had applied for amendment of plaint in accordance with the schedule appended to the Chamber Summons. Leave was applied for to introduce paragraph no.13-A and prayer clauses (d-1) and (d-2) in the plaint.

5. The City Civil Court, by order dated 11/07/2014, partly allowed the Chamber Summons. The operative portion of the order dated 11/07/2014 reads thus :-

- “1. The chamber summons is hereby partly allowed.*
- 2. The proposed amendment reflected from the Schedule of chamber summons excluding prayer of injunction in respect of premises i.e. Vihar Coffee House, S.V.P. Road, Opera House, Mumbai 400 004 is hereby allowed.*
- 3. The plaintiff is hereby directed to carry out the amendment within stipulated time.*
- 4. The Ch.summ. no.388/14 is hereby disposed off.*
- 5. The plaintiff is at liberty to carry out the amendment though the date is fixed on 11/8/2014.”*

6. From the aforesaid, it is quite clear that leave was granted to amend the plaint by introducing para 13-A and prayer clause (d-1).

However, no leave was granted for introducing prayer clause (d-2). The order dated 11/07/2014 was not challenged either by the Petitioners or by the Respondents. In fact, in pursuance of order dated 11/07/2014, the Petitioners carried out the amendment to the plaint.

7. The Respondents thereafter took out a Notice of Motion No.3767 of 2014 seeking the following relief :

“(a) The amendment of the Plaint done and the averments added in contradiction to the order dated 11.07.2014, passed by His Honour Judge S.V.Hande be struck off by this Hon'ble Court.”

8. The City Civil Court, which was by now presided over by Judge M. S. Gupta, has allowed the Notice of Motion vide the impugned order.

9. As noted earlier, the order dated 11/07/2014 has attained finality for want of challenge by either parties. The Petitioners carried out the amendment to the plaint in accordance with the order dated 11/07/2014. The impugned order, has purported to strike off certain portion of the amended pleading. This is virtually modifying the order dated 11/07/2014 which had already attained finality. This was clearly impermissible, particularly when no review was applied for by the Respondents in the matter of order dated 11/07/2014. Under the guise of interpretation, it is not permissible to review the order made by the predecessor presiding officer. In any case, if there was any

genuine difficulty in appreciating the scope and import of the order dated 11/07/2014, appropriate proceeding could have been taken out for the said purpose. However, the notice of motion, in the facts and circumstances of the present case, was clearly misconceived. The impugned order is unsustainable and is therefore set aside.

10. Rule is made absolute in terms of prayer clause (a). There shall, however, be no order as to costs.

(M. S. SONAK, J.)