

Mr. Nadir J. Vakil, Petitioner No.1 present in person.
Mr. Dev Upadhyay a/w. Mr. Dakshesh Vyas i/b. Ramesh Makhija & Co. for Respondent No.1.

P.C. :

2. By this Petition under Article 227 of the Constitution of India, petitioners, hereinafter referred to as plaintiffs, have challenged the judgment and order dated 18.04.2015 passed by the learned Judge, City Civil Court, Greater Mumbai below exhibit-23 in Short Cause Suit No.10010 of 1990 (High Court Suit No.2672/1990). By that order, the learned trial Judge rejected the application filed by the plaintiffs for permission to file additional affidavit of examination-in-chief.

3. In support of this Petition, Mr. Vakil submitted that plaintiffs have filed affidavit of examination-in-chief of the plaintiff No.1. Due to inadvertence, certain facts remain to be incorporated, which are of vital importance to the plaintiffs' case, which the plaintiffs intend to incorporate in the evidence of plaintiff No.1. During the course of arguments, Mr. Vakil submitted that the facts remained to be incorporated due to his mind being episoidal / episodic, that is to say

mind punctuated memory deficit of all human beings.

4. On the other hand, Mr. Upadhyay supported the impugned order. He submitted that the plaintiff No.1 filed first affidavit of examination-in-chief in lieu of evidence in September 2013. Thereafter, application for leading secondary evidence was filed, which was argued in person by the plaintiff No.1. The said application was allowed by the learned trial Judge. He submitted that now, P.W.1 has to face cross-examination and at that stage, the present application is taken out. He submitted that for the reasons stated in paragraph 5 of the impugned order, no case is made out for invocation of powers under Article 227 of Constitution of India.

5. I have heard the parties. In paragraph 3 of the application-exhibit 23, it is asserted as under:

“3. The Plaintiffs state that in the said Affidavit in Examination in Chief of the Plaintiff No.1 due to inadvertence certain facts remained to be incorporated which are of vital importance to the plaintiff's case which the plaintiffs intend to incorporate in the evidence of the plaintiff No.1.”

6. The learned trial Judge held in paragraph 5 thus,

“5] If we perused paragraph No.3 of the application, we will find that it is specifically mentioned that due to inadvertence certain facts are remained to be incorporated, which are of vital importance. But, there is nothing on record to show that what are those facts, which were remained to be incorporated in plaint, due to inadvertence. The Suit is of the year 1990. This application is moved on 07.04.2015. As, I have already mentioned that this Court on 20.03.2015 rejected the application of plaintiff (Exh.21). If plaintiff is permitted to file additional affidavit it would cause prejudice to other side and also it is not necessary for just decision of the case.”

7. On perusal of application at exhibit-23 and the reasons given by the learned trial Judge in paragraph 5, I do not find that the learned trial Judge committed any error in rejecting the application. 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. It is, however, expressly made clear that where a decree is appealed from by the petitioner, any error, defect or irregularity in the impugned order, affecting the decision of the case, may be set forth as a ground of objection in the memorandum of appeal as contemplated by Section 105(1) C.P.C.

(R. G. KETKAR, J.)

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