

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.7363 OF 2015

Mr. Shabbir Akbarali Jamnagarwala and others .. Petitioners

Versus

Mr. Shivaji Sakharam Bhadale and others .. Respondents

Mr. S. C. Wakankar, for the Petitioners.

CORAM : R.M. SAVANT, J.

DATE : 25th AUGUST, 2015

PC.

1. The Writ Jurisdiction of this Court is invoked against the order dated 13.01.2015 passed by the Learned Additional Judge, Small Causes Court, Pune, by which order the application Exh.71 filed for amendment of the plaint came to be rejected. The Petitioner is the original Plaintiff who has filed the suit in question claiming a declaration that the proceeding bearing No.1292 of 1999, 633 of 2001 and 514 of 2004 referred to paragraph Nos.12(a), 12(b) and 12(c) filed by the Defendants against the Plaintiffs are malicious prosecutions and the Defendants be directed to pay damages to the tune of Rs.15,00,000/- to the Plaintiffs and a decree be passed accordingly for the said sum in favour of the Plaintiffs. By the instant application, what the Plaintiffs are seeking is to bring on record the orders passed in the said proceedings as also to claim enhanced

damages at Rs.30,00,000/- for the expenses incurred by the Plaintiff for prosecuting the said proceedings and the loss in business which the Plaintiff has suffered on account of his preoccupation with the said litigation.

2 . In so far as the suit is concerned, it is required to be noted that the same bears Special Suit No.1190 of 2004. In the said suit, Plaintiff Mr. Shabbir has filed his affidavit in lieu of examination-in-chief on 21.02.2009 and as also additional affidavit on 29.03.2010. It is since then that the suit is pending for the cross-examination of the Plaintiff. The instant application Exh.71 was filed almost after a period of 3 ½ years from the additional affidavit being filed on 29.03.2010. In so far as the application Exh.71 is concerned, the same has been replied to on behalf of the Defendants. The Defendants as can be seen from their reply have questioned the Plaintiffs entitlement to seek the amendment of the plaint. According to the Defendants, the Plaintiff was aware of the three proceedings which were pending and therefore, the Plaintiff is not entitled to seek amendment of the plaint. In so far as the application Exh.71 is concerned, the impugned order discloses that both the Plaintiffs and the Defendants were unrepresented on the day when the said application was heard. The Learned Counsel appearing for the Petitioner Mr. S. C. Wakankar also fairly states that both the Plaintiffs and the Defendants

were not represented on the day when the said application Exh.71 was placed for hearing. The Trial Court has rejected the said application on the ground that the trial has already commenced and that the suit is pending for cross-examination of the Plaintiff Mr. Shabbir since March 2010. In so far as the averments which are now sought to be incorporated in the plaint are concerned, the Trial Court has held that the orders passed by the Appellate Court as well as this Court can always be placed by the Plaintiffs by producing certified copies of the same and therefore, amendment of the plaint is not required. In so far as the enhancement which the Plaintiff has sought in the amount of damages, the Trial Court has observed that if the plaint is allowed to be amended to incorporate the enhanced damages sought by the Plaintiff, the same would result in change in the plaint as also the nature of the suit would be changed. In my view, since the Plaintiff at the time of filing of the suit was very well aware about the pending proceedings filed by the Defendants against him and it is on the said basis that he seems to have claimed the amount of Rs.15,00,000/-. The Plaintiff now cannot be allowed to change the claim so as to enhance it to Rs.30,00,000/-. If the same is allowed, the same would be an endless exercise as a further enhancement may be sought after sometime. Having regard to the stage at which the suit is at present as also considering the fact that the suit is awaiting the cross-examination of the Plaintiff since the

year 2010, as also having regard to the fact that the suit is of the year 2004, no case for interference in the Writ Jurisdiction of this Court is made out. The Writ Petition is accordingly dismissed.

[R.M. SAVANT, J]