

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.8108 OF 2014

Sachin Anil Shah.] ... Petitioner

Versus

Vinodchandra Ravji Shah and Ors.] ... Respondents

Mr. Surel S. Shah for Petitioner.
Mr. V. S. Talkute for Respondent No.1.

CORAM :- M. S. SONAK, J.

DATE :- APRIL 27, 2015

P. C. :-

1. The learned Counsel for Petitioner seeks leave to delete Respondent Nos.2 to 15, as their presence is not necessary for the purposes of deciding the present petition. Accordingly leave is granted to delete the said Respondents. Amendment to be carried out forthwith.

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

3. This petition challenges order dated 03/07/2014 made by the Civil Judge, Senior Division, Satara, permitting the Respondent No.1 (Original Plaintiff) to amend the plaint.

4. Mr.Shah, the learned Counsel for Petitioner, submitted that the suit in the present case was instituted in the year 2005. The application for amendment was filed in the year 2009 and the same has been decided in the year 2014. By the proposed amendment, the Plaintiff, seeks to withdraw admissions made, *inter alia*, in another suit instituted by the Plaintiff's son; enlarge the scope of the suit as originally instituted; raise issues which are *ex facie* barred by the law of limitation; and in general, to protract the proceedings. The learned Counsel submitted that the amendment application was filed *mala fide*, as the text of the proposed amendment makes no reference to certain properties which have been sold by the Respondent, on the basis that the suit property has already been partitioned in the year 1956.

5. On the other hand, Mr.Talkute, the learned Counsel for Respondent No.1, submitted that the proposed amendment merely seeks to clarify the plea already taken in the plaint by furnish of details. Mr.Talkute further submitted that this is not a case of withdrawal of admissions, at the highest, a case where the so called 'admissions' are being explained. The issue of limitation does not arise, an in any case, the same has been kept open by the impugned order. Further, amendment was applied for at a stage prior to the casting of the issues and consequently, there is no jurisdictional error in allowing the same.

6. Having heard the learned Counsel for the parties, in my judgment, it would not be appropriate to interfere with the impugned order, save and except on the aspect of costs, considering that the suit is of the year 2005. Instead, it would be appropriate if the Petitioner is granted liberty to question the impugned order dated 03/07/2014 in appeal should the Special Civil Suit No.22 of 2005, in which the impugned order has been made, is ultimately decided against the Petitioner. The learned Counsel for Petitioner has taken instructions from the Petitioner who is present in the Court and on the basis of the same, submits that the Petitioner would not be averse to adoption of such a course of action.

7. The impugned order has permitted amendment, the text of which runs into over 33 pages, when in fact, the original plaint was about 19 pages. Normally, the number of pages is an irrelevant factor. However, the amendment seeks to make such reference to deeds, documents and circumstances spanning from the year 1956. The amendment virtually seeks to respond to the defences raised by the Petitioner in his Written Statement. All this, though not being interfered with at this stage, is certainly bound to occasion prejudice to the Petitioner as also in the matter of expeditious and convenient disposal of the suit. In such circumstances, to award costs of Rs.5,000/- only was certainly improper and not in tune with the law laid down by the Hon'ble Supreme Court in the case of *Revajeetu Builders and Developers Vs. Narayanswamy and Sons and Others*¹.

¹ (2009) 10 Supreme Court Cases 84

At paras 61 and 62 of the said Judgment, the Hon'ble Supreme Court has held as follows :-

“61. The courts have consistently laid down that for unnecessary delay and inconvenience; the opposite party must be compensated with costs. The imposition of costs is an important judicial exercise particularly when the courts deal with the cases of amendment. The costs cannot and should not be imposed arbitrarily. In our view, the following parameters must be taken in to consideration while imposing the costs. These factors are illustrative in nature and not exhaustive :

(i) At what stage the amendment was sought.

(ii) While imposing the costs, it should be taken into consideration whether the amendment has been sought at a pre-trial or post-trial stage.

(iii) The financial benefit derived by one party at the cost of other party should be properly calculated in terms of money and the costs be awarded accordingly.

(iv) The imposition of costs should not be symbolic but realistic.

(v) The delay and inconvenience caused to the opposite side must be clearly evaluated in terms of additional and extra court hearings compelling the

opposite party to bear the extra costs.

(vi) In case of appeal to higher courts, the victim of the amendment is compelled to bear considerable additional costs.

All these aspects must be carefully taken into consideration while awarding the costs.

62. The purpose of imposing costs is to :

(a) discourage mala fide amendments designed to delay the legal proceedings;

(b) compensate the other party for the delay and the inconvenience caused;

(c) compensate the other party for avoidable expenses on the litigation which had to be incurred by the opposite party for opposing the amendment; and

(d) to send a clear message that the parties have to be careful while drafting the original pleadings.”

8. Applying the aforesaid principles to the facts and circumstances of the present case, the Respondent is liable to pay costs of Rs.1,00,000/- (Rupees One Lac Only) to the Petitioner. It is ordered accordingly. The Respondent to deposit such costs of Rs.1,00,000/- before the trial Court within a period of four weeks from today. Upon deposit of such costs, the Petitioner would be at liberty to withdraw the same unconditionally and without prejudice to the Petitioner's

right to challenge the impugned order, in case, Special Civil Suit No.22 of 2005 is ultimately decided against the Petitioner.

9. Further, taking into consideration the circumstance that the suit is of the year 2005, the learned Civil Judge is directed to dispose of the same as expeditiously as possible and in any case within a period of 18 months from today. All parties to co-operate in the expeditious disposal of the suit.

10. The Petitioner and other Defendants in the suit are granted liberty to file additional Written Statement/s up to 15/06/2015.

11. The Rule is made absolute to the aforesaid extent. There shall be no order of separate costs insofar as the present petition is concerned.

12. All parties to act on the basis of authenticated copy of this order.

(M. S. SONAK, J.)