

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

WRIT PETITION NO.8204 OF 2012

Mr. M. G. Waikar

.. Petitioner

Versus

UCO Bank and others

.. Respondents

**Shri. R. N. Sanghavi with Mr. Sagar Batavia & Ms. Anjali Bhujbal, for
the Petitioner.**

Mrs. Chandana Salgaonkar, for the Respondent No.2.

CORAM : R.M. SAVANT, J.

DATE : 04th MARCH, 2015

PC.

1. The Writ Jurisdiction of this Court is invoked against the order dated 03.01.2011 passed by the Learned Civil Judge, Senior Division, Pune, by which order the application Exh.186 for amendment of the plaint so as to incorporate paragraphs 10A to 10E, paragraph 11 and to add a prayer in the plaint came to be allowed is taken exception to by way of the above Petition.

2. The suit in question being Special Civil Suit No.724 of 1988 was originally filed by the Respondent No.1 herein UCO Bank for recovery of the dues from the Defendants No.1 and 2 i.e. Respondents No.2 and 3 herein who are now the Plaintiffs No.2 and 3. The loan advanced to the

original Defendant No.1 was towards the purchase of a Tractor. In view of the fact that the loan was not cleared by the Defendant No.1 that the suit in question came to be filed. It appears that during the pendency of the suit an agreement was entered into between the Defendant No.1 i.e. Dr. N. Sudhirkumar and one Shri. M. G. Waikar i.e. present petitioner by which agreement the said Shri. M. G. Waikar had agreed to take the Tractor on rental basis and had agreed to clear the loan amount of the Respondent No.1 Bank. It appears that there was some default committed by the said Shri. M. G. Waikar in respect of the said agreement entered into by him with Defendant No.1 Dr. N. Sudhirkumar. The said Dr. N. Sudhirkumar repaid the loan amount of the Respondent No.1 Bank and thereafter applied for transposing himself as Plaintiff to the suit, in view of the repayment of the loan amount by him to the Bank, he also filed an application for impleading the said Shri. M. G. Waikar as a party to the suit. Both the applications i.e. Exh.117 and Exh.127 came to be allowed by the Trial Court by order dated 01.07.2004. The Defendant No.1 Dr. N. Sudhirkumar accordingly came to be transposed as Plaintiff No.2 and said Shri. M. G. Waikar came to be added as the Defendant to the suit. The matter rested therefore for sometime till the instant application came to be filed by the Plaintiff No.2 for amendment of the plaint. The said amendments sought were on the basis that they are consequential to the

said Dr. N. Sudhirkumar being joined as the Plaintiff No.2 and said Shri. M. G. Waikar added as the Defendant No.1. In paragraph 10A to 10E the averments relating to the agreement which was entered into between Dr. N. Sudhirkumar and Shri. M. G. Waikar have been adverted, the fact that Shri. M. G. Waikar has not abided by the agreement in the matter of payment received Rs.7000/- to the Plaintiff No.2 and for discharging the liability towards the loan amount has been adverted. It has also been averred in the amendment sought that since the Plaintiff No.2 has discharged the liability towards the Bank, the Plaintiff No.2 would be entitled to recover the amount from the said Shri. M. G. Waikar. In paragraph 10E the amount due from Shri. M. G. Waikar has been stated and the calculation has also been mentioned. The Plaintiff No.2 has sought the addition of cause of action against the said Shri. M. G. Waikar and also sought to incorporate a relief in respect of the claim against Shri. M. G. Waikar. The said application Exh.186 filed by the Plaintiff No.2 came to be opposed to on behalf of the Defendant No.1 inter-alia on the grounds mentioned in the reply. Objection was on the ground that the nature of the suit would change, if the amendments are allowed to be incorporated. It is further stated that the Defendant No.1 Shri. M. G. Waikar has nothing to do with the loan transaction between the Plaintiff and the said Dr. N. Sudhirkumar. The transaction between the Plaintiff and Shri. M. G. Waikar

was denied.

3. The Trial Court considered the said application Exh.186 and principally on the ground that the amendment sought can only be said to be consequential to the transposition of the original Defendant No.1 Dr. N. Sudhirkumar as the Plaintiff No.2, allowed the same. The Trial Court held that though there is a delay of about five years in moving the said application the Defendant Shri. M. G. Waikar can be compensated by way of costs and imposed costs of Rs.2000/- on the Plaintiff No.2. The Trial Court has also observed in the impugned order that the amendment if allowed does not change the nature of the suit and that the said amendment is required to be granted to effectually and completely adjudicate the suit in question.

4. The Learned Counsel appearing for the Petitioner Shri. R. N. Sanghavi would seek to assail the impugned order on the ground that though the amendment was allowed on 1.07.2004 allowing the transposition of the original Defendant No.1 as the Plaintiff No.2 the instant application was filed only on 24.11.2010, whereby a claim is sought to be made the Defendant Shri. M. G. Waikar. The Learned Counsel would therefore contend that a time barred claim is now allowed to be incorporated the plaint. The Learned Counsel sought to place reliance on

the unreported order of this Court in Writ Petition No.8639 of 2011 dated 27th August, 2012 in the matter of Shri. S. A. Khan Vs. M/s. Thakur Savdekar & Company Ltd. The Learned Counsel would also contend that since the claim is ex-facie time barred, the Trial Court has erred in allowing the application. In my view, there is no merit in the above Petition. As indicated above, the application filed by the original Defendant No.1 Dr. N. Sudhirkumar for being transposed as Plaintiff came to be allowed by order dated 01.07.2004. The person with whom Dr. N. Sudhirkumar had entered into an agreement namely Shri. M. G. Waikar who is the present Petitioner was also added as Defendant to the suit by an order passed on same day i.e. on 01.07.2004. The amendment sought vide application Exh.186 can only be said to be consequential to the said Dr. N. Sudhirkumar being transposed as Plaintiff No.2 and the said Shri. M. G. Waikar being added as Defendant to the suit. Though there is a delay in filing the application, the Defendant has been compensated by way of costs. In so far as the issue of limitation is concerned, it is always open for the parties to urge their contention in respect of the said aspect even if the amendment is allowed and raise the issue in the suit. The Trial Court having deemed it fit to allow the amendment on the ground that it is consequential and would also result in complete and effectual adjudication of the suit. In the light of the facts that are prevailing in this

case, this Court does not deem it appropriate to interfere with the impugned order passed by the Trial Court. The judgment in S. A. Khan's case (*Supra*) has therefore no application. The Learned Counsel appearing for the Respondent No.2 states that the amendment has already been carried out in the plaint in the year 2011. It is required to be noted that the instant Petition was dismissed for default on account of the conditional order and restored to file by an order dated 22nd January, 2015. Hence, no case for interference in the Writ Jurisdiction of this Court is made out. The Writ Petition is accordingly dismissed. At this stage, the Learned Counsel for the Petitioner seeks stay of this order. In the facts and circumstances of the case where the amendment has been allowed long back in the year 2011 the prayer is rejected. In view of the dismissal of the above Petition, Civil Application does not survive and to accordingly stand disposed of as such.

[R.M. SAVANT, J]