

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.8891 OF 2015

Sau. Ujwala Laxman Wanker.]
After marriage, Sau. Ujwala Pramod Khope.] ... Petitioner

Versus

Pramod Purushottam Khope.] ... Respondents

Mr. A. B. Tajane for Petitioner.
Ms. Sharan Patole for Respondents.

CORAM :- M. S. SONAK, J.
DATE :- OCTOBER 09, 2015

P. C. :-

1. This petition is directed against the order dated 24/06/2015 by which the Family Court at Nashik has rejected the petitioner's application for amendment of the plaint. Mr. Tajane, learned Counsel for petitioner, submitted that mere delay by itself is no ground for rejection of application for amendment, particularly where the Court finds that by allowing the application, real controversy between the parties may be resolved. Besides, Mr. Tajane has submitted that the proposed amendment was only technical in nature and that the averments now proposed to be introduced by way of amendment, were not pleaded for reasons beyond the control of the petitioner. Mr. Tajane has placed reliance upon the decisions of

the Hon'ble Apex Court in the cases of *Sajjan Kumar Versus Ram Kishan*¹, *Andhra Bank Versus ABN Amro Bank N. V. and Others*², *Mansingh Versus Union of India*³, *Surender Kumar Sharma Versus Makhan Singh*⁴ and *Sunita Rani and Others Versus Sri Chand and Others*⁵.

2. In the present case, the application seeking leave to amend is totally cryptic. The proposed amendment seeks to introduce certain alleged events which are said to have transpired much before the suit was instituted. It is not clarified as to how the introduction of such events constitutes merely '*technical amendment*'. The second reason set out in the application seeking leave to amend is that the matter was '*not within her control and knowledge*'. Again, there is no elaboration on the part of on this aspect. It is to be noted that the petitioner is a Deputy Superintendent of Police posted at Police Training College, Nashik. The petitioner has engaged an Advocate. The vague reference to change of Advocate does not render the position beyond control or knowledge of the petitioner. In any case, the proposed amendment makes reference to alleged events, which were concerning the petitioner and therefore, the petitioner can never claim that the events were not within her knowledge. That apart, this is not a case where the leave to amend has been declined on the ground of mere delay. The Trial Court, upon examination of the matter, has recorded a finding that the proposed amendment is not at

1 (2005) 13 Supreme Court Cases 89

2 (2007) 6 Supreme Court Cases 167

3 (2004) 13 Supreme Court Cases 42

4 (2009) 10 Supreme Court Cases 626

5 (2009) 10 Supreme Court Cases 628

all necessary to decide the real controversy between the parties. Accordingly, the decisions upon which reliance has been placed by Mr. Tajane are distinguishable because in the said decisions, a finding was arrived at that the amendment was necessary and relevant for the purposes of deciding the real controversy between the parties. Besides, in some of the cases upon which reliance was placed, the amendments proposed were indeed of a technical nature and leave to carry out the same were applied for no sooner the error was made known in the written statement filed by the opposite party. In contrast, the petitioner has filed application seeking leave to amend at a highly belated stage much after the trial in the suit has commenced. In this case, the petitioner filed affidavit in lieu of examination-in-chief on 27/09/2013 and therefore, the trial commenced from the said date. The application seeking leave to amend has been made only on 25/05/2015. In the meanwhile on 26/02/2015, the petitioner has also filed a pursis closing her evidence. The application seeking leave to amend was made at a stage where the respondent had already filed his affidavit in lieu of examination-in-chief and the matter was posted for his cross-examination. There is absolutely no explanation explaining such inordinate delay. Mr. Tajane may be right that delay by itself, is no bar to grant of leave to amend. However, for that purpose, there should be some explanation for the delay. There should be some material to establish that despite due diligence, leave to amend could not be applied for before the commencement of the trial or that the amendment is necessitated due to subsequent events. None of these circumstances apply to the present case.

3. In the aforesaid circumstances, it cannot be said that there is any jurisdictional error or perversity of approach in making the impugned order. Petition is therefore dismissed. There shall be no order as to costs.

(M. S. SONAK, J.)