

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 11144 OF 2013

Kamala Janardhan Anant Padmanabh
@ K.J.A. Padmanabh .. Petitioner
vs.
M/s. Kukreja Constructions and anr. .. Respondents

Ms Sukruta Chimalker h/f. S.B. Prabhavalkar for the Petitioner.
Mr. Chirag Mody a/w. Mr. S.K. Chari i/b DSK Legal for Respondent
No.1.

CORAM : M. S. SONAK, J.

DATE : 1 April, 2015.

P.C. :-

1] Learned counsel for petitioner seeks leave to delete respondent No.2-defendant No.1 for the purposes of the present petition. Leave is granted. Necessary amendment to be carried out forthwith.

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

3] This petition challenges the order dated 12 August 2013, by which the learned City Civil Judge has permitted the respondent-plaintiff to amend the plaint subject to payment of costs of Rs.2,000/-

4] The learned counsel for the petitioner-defendant No.2 submitted that in the present case, the Chamber Summons seeking leave to amend was taken out after unreasonable, inordinate and

unexplained delay. The affidavit-in-support of the Chamber Summons gives no explanation whatsoever with regard to such delay. Further, the amendment which has been permitted seeks to change the nature of the controversy and further rights which have been vested in the petitioner are sought to be taken away. The learned counsel for the petitioner also submitted that the issue of bar of limitation has not at all been considered whilst making the impugned order. Besides, the costs awarded are also too meagre in the facts and circumstances of the present case. For all these reasons, learned counsel for the petitioner submitted that the impugned order be interfered with.

5] The learned counsel for respondent No.1-plaintiff submitted that the petitioner-defendant No.2, upon her own motion was impleaded as a defendant in the suit by order dated 4 February 2009. Further, the Suit No. 4912 of 2000 between the petitioner and original defendant No.1 was settled vide Consent Terms dated 20 November 2006. In terms thereof, the petitioner has taken over liabilities, if any, of the original defendant No.1, in the context of the suit premises as well as other matters. The amendment, basically seeks to place on record such subsequent events and the amendment is absolutely necessary for deciding the real controversy between the parties and also for the purposes of avoiding multiplicity of the proceedings. The learned counsel for respondent No.1-plaintiff pointed out that this is a suit of the year 1993 and consequently the amended provision of the CPC are inapplicable. In any case, leave to amend was applied for prior to the commencement of the trial and in view of the law laid down by the Apex Court in case of *Sampath*

Kumar Vs. Ayyakannu & anr. -(2002) 7 SCC 559, pre-trial amendment should be liberally allowed.

6] Having heard the learned counsel for the parties and perused the record, in my judgment, there is no necessity to interfere with the impugned order by which the respondent No.1-plaintiff has been permitted to amend the plaint. However, costs of Rs.2,000/- awarded by impugned order are indeed too meagre in the facts and circumstances of the case.

7] In this case, the petitioner herein was not originally a party to the suit. Upon motion made by the petitioner, the petitioner was impleaded as defendant No.2 by the order dated 4 February 2009. There is on record, the consent terms recorded in November 2006 in Suit No.4912 of 2000 in terms whereof, the petitioner claims to have acquired some interest in the suit premises. Earlier, it was the case of the respondent No.1 that the petitioner was acting only for and on behalf of the original defendant No.1 against whom the suit had been instituted. The development arisen out of the consent terms dated 20 November 2006 is certainly a subsequent development.

8] This is not a case where the nature of the suit is sought to be fundamentally altered. The amendment, in fact, will assist in avoiding multiplicity of the proceedings. The amendment does not take away any vested rights as such of the petitioner. In so far as the defence of limitation is concerned, the impugned order, in no way shuts out the same. In pursuance of the amendment, the petitioner shall always have a liberty of filing additional written statement and

raising all defences including , *inter alia*, the plea of limitation. In any case, it is clarified that it shall be open to the petitioner to file an additional written statement and to take up all defences, including plea of limitation. Obviously, at this stage, this Court is not concerned with the validity of such plea and all the contentions of all parties in this regard will be decided by the learned City Civil Judge in the due course of the suit.

9] There is, however, delay on the part of respondent No.1-plaintiff in seeking leave to amend. The affidavit in support of the Chamber Summons offers no explanation, or in any case no sufficient explanation with regard to such delay. Although, this may not be a ground to interfere with the impugned order particularly since the proviso to Order 6 Rule 17 of the CPC is not attracted in the present matter and further even otherwise, the Chamber Summons seeking leave to amend was taken out before the commencement of the trial, nevertheless, this is a circumstance to be taken into consideration in the matter of determination of appropriate costs.

10] The impugned order, imposed costs of only Rs.2,000/- upon the respondent No.1-plaintiff , taking into consideration the circumstance that the suit is of the year 1993 and the petitioner has been impleaded as defendant No.2 in the year 2009, it was expected that the respondent No.1-plaintiff acts with greater dispatch in the matter. The affidavit-in-support of the Chamber Summons also indicates a some what casual approach in the matter. For all these reasons, although the impugned order, to the extent it permits

amendment is not liable to be interfered with, but the respondent No.1-plaintiff is directed to pay costs of Rs.20,000/- (Rs. Twenty Thousand only) to the petitioner.

11] Accordingly, the impugned order is modified and the amount of costs is enhanced from Rs.2,000/- (Rs.Two Thousand) to Rs.20,000/- (Rs.Twenty Thousand). In so far as leave to amend is concerned, the same is not interfered with. The costs to be paid by respondent No.1-plaintiff to the petitioner within a period of four weeks from today.

12] The petitioner and another defendant are at liberty to file an additional written statement within a period of six weeks from today.

13] Rule is made absolute to the aforesaid extent only. There shall be no separate order as to costs in this petition.

14] All parties to act upon an authenticated copy of this order.

(M. S. SONAK, J.)

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