

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

WRIT PETITION NO.1158 OF 2015

M/s. Wallams (I) Agro Products &

Power Ltd. and another

.. Petitioners

Versus

M/s. Noble Resources & Trading (I) Pvt. Ltd.

.. Respondent

Mrs. S. R. Kumbhat, for the Petitioners.

CORAM : R.M. SAVANT, J.

DATE : 20th FEBRUARY, 2015

PC.

1. The Writ Jurisdiction of this Court is invoked against the order dated 27th June, 2014 passed by the Learned 5th Joint Civil Judge, Junior Division, Islampur, by which order the application Exh.548 filed by the Plaintiff to carry out amendment which was allowed by the order dated 21.02.2012 came to be granted and the Plaintiff was permitted to carry out amendment in terms of the said order dated 21.02.2012 albeit on the payment of the costs of Rs.5000/- on account of the delay.

2. The Plaintiff had filed an application for being permitted to amend the plaint being Exh.178 which was allowed by the Trial Court by order dated 21.02.2012. It appears that the Petitioners herein who are the

Defendants had challenged the said order by way of Writ Petition in this Court being Writ Petition No.3270 of 2012. A Learned Single Judge of this Court had dismissed the Writ Petition on 16.10.2012. It appears that thereafter the suit had come up before the Trial Court on 27.02.2013 when the Trial Court noticed that the amendment was not carried out and therefore, posted the suit to 11.03.2013 for passing of appropriate orders. In view of the fact that even on 11.03.2013 the amendment was not carried out, the Trial Court passed an order rejecting the application for amendment of the plaint as no reason was placed on record by the Plaintiff as to why the amendment was not carried out. The Plaintiffs thereafter filed the instant application on 26th July, 2013 seeking extension of time to carry out the amendment which was allowed by the order dated 21.02.2012 passed on Exh.178. The ground set out in the application was to the effect that since the Writ Petition filed by the Defendants challenging the said order dated 21.02.2012 was filed that the amendment could not be carried out within the time stipulated by the said order. It was also contended that there was a communication gap between the Advocate and the Plaintiff on account of which the Plaintiff was not aware of the said time frame within which the amendment was to be carried out. The Plaintiff sought to place reliance on the judgment of a Learned Single Judge of this Court reported in 2013(3) Mh.L.J.406,

where, in a similar fact situation the Learned Judge has held that an application seeking extension of time to carry out the amendment after the Trial Court has passed an order rejecting the said application on account of non-compliance of the order allowing the amendment is concerned, is referable to Order 6 Rule 18 of the Code of Civil Procedure.

3. The said application Exh.548 was opposed to on behalf of the Defendants. The Defendants contended that allowing the said application would amount to review of the order, that the Plaintiff has not made out any ground as to why the amendment was not carried out within 14 days, and that the application has not been filed by the person authorized by the Plaintiff. The objections raised on behalf of the Defendants have been dealt with by the Trial Court. The Trial Court adverted to the judgment of the Learned Single Judge of this Court and held that the application Exh.548 is referable to Order 6 Rule 18 of the Code of Civil Procedure and that the reasons mentioned in the said application can be the plausible reasons as to why the amendment was not carried out. The Trial Court appreciated the fact that there is some delay in carrying out the amendment and therefore observed that the Defendants can be compensated for the said delay. However, substantial right of the Plaintiffs which has accrued on account of the application being allowed could not be taken away. The Trial Court has accordingly allowed the said

application Exh.548 by imposing costs of Rs.5000/- on the Plaintiffs to be paid over to the Defendants.

4. During the course of hearing of the above Petition, the Learned Counsel for the petitioners on instructions of the Advocate Shri. Toshniwal who is appearing in the Trial Court states that the amendment has already been carried out as permitted by the impugned order. If that be so and also having regard to the reasons mentioned in the impugned order, the same does not merit any interdiction at the hands of this Court in its Writ Jurisdiction. The Writ Petition is accordingly dismissed.

[R.M. SAVANT, J]