

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.360 OF 2015

Prakash Kakubhai Rangawala.] ... Petitioner

Versus

Smt. Malti Wd/o. Mulraj B. Sampat and Ors.] ... Respondents

Mr. B. G. Vaidya for Petitioner.

Mr. Harshawardhan Salgaonkar i/b Mr. Harshad Bhadbhade for Respondent No.8.

Mr. Prakash Kakubhai Rangawala, Petitioner, present in person.

CORAM :- M. S. SONAK, J.

DATE :- OCTOBER 28, 2015

P. C. :-

1. Rule.
2. With the consent of and at the request of learned Counsel for parties, Rule is made returnable forthwith.
3. Affidavit of service has already been filed. In any case, the contesting respondent is represented by Mr. Harshawardhan Salgaonkar.

4. On the perusal of the memo of the petition, which was instituted by the petitioner appearing in person, the challenge is to the order dated 11/06/2014 made by the Revisional Court refusing to exercise revisional jurisdiction in the context of order dated 17/04/2014 made by the Trial Court. There are grounds in the writ petition which challenge the order dated 17/04/2014 as well. However, there is no formal prayer seeking to set aside the order dated 17/04/2014. This is only a technical omission and therefore, leave is granted to the petitioner, who is now represented by Advocate Mr. Vaidya, to carry out amendment to the prayer clause. The amendment to be carried out forthwith.

5. In this case, the petitioner is the plaintiff in R.A.E. Suit No.426/794 of 2008. The petitioner was directed to implead a party as defendant no.10 in the suit. The petitioner did not actually carry out the amendment to the plaint and therefore, the Court itself carried out the amendment to the plaint. The petitioner has not challenged the order directing the impleadment of defendant no.10. Thereafter, the defendant no.8 in the suit (respondent no.8 in this petition) applied for furnish of a copy of the amended plaint. The Trial Court, by its order dated 10/01/2014 below Exh.115, directed the petitioner to furnish to the respondent no.8 copy of the amended plaint. In the said order, it was made clear that in case there is non-compliance, further action would be taken in terms of law. The petitioner, again failed to supply to the respondent no.8 a copy of the amended plaint. Therefore, the respondent no.8 pointed out to the Trial Court and

applied for implementation of the order made on 10/01/2014. The Trial Court, upon noticing that the petitioner has not furnished a copy of the amended plaint to the respondent no.8 despite directions to do so, has made the impugned order dated 17/04/2014 and dismissed the entire suit.

6. The petitioner thereafter instituted a revision petition before the Revisional Court being Revision Application No.151 of 2014. The Revisional Court, relying upon the decision of the Full Bench of this Court in the case of ***Bhartiben Shah and Anr. Vs. Gracy Thomas & Ors.***¹, has dismissed the revision petition holding that the same is not maintainable.

7. Upon hearing the learned Counsel for parties and perusing the record, in my judgment, the orders made by the Trial Court as well as the Revisional Court are required to be set aside. The Revisional Court was not justified in rejecting the Revision Application as not maintainable because the order dated 17/04/2014 which has resulted in the very dismissal of the suit can hardly be termed as a procedural order not affecting the substantive rights of the parties. In fact in para 86, the Full Bench has given instances of certain revisable orders which, *inter alia*, include an order refusing leave to amend, an order rejecting application for restoration of suit, an order allowing or rejecting an application for a declaration that the suit is abated, an order refusing to extend time for filing written statement. The Full

¹ 2013(2) Mh.L.J. 25

Bench has made it clear that the relief in para 86 is only illustrative and not exhaustive. It is held that for an order to be revisable, the order must affect the very existence of the suit or the foundation of the party's case and not merely a procedural order, not affecting the substantive rights of the parties. In the present case, since the petitioner's suit has itself been dismissed, it cannot be said that the order impugned did not affect the very existence of the suit. The impugned order dated 11/06/2014 made by the Revisional Court is therefore required to be set aside and is hereby set aside.

8. Normally, upon setting aside the revisional order, the matter should have been remanded to the Revisional Court for decision in accordance with law. However considering the peculiar facts and circumstances of the present case, it is not necessary to remand the matter to the Revisional Court. The order dated 17/04/2014 dismissing the suit for lapse on the part of the petitioner in furnishing a copy of the amended plaint to the respondent no.8 is too harsh and disproportionate. It must be noted that the petitioner was appearing in person and though the petitioner, on previous occasions as well, has acted in a rather stubborn and obstinate manner, the matter could have been resolved by imposition of some reasonable costs upon the petitioner rather than dismiss his entire suit. The petitioner who is present in person along his Advocate, states that he will, without fail, furnish to the respondent no.8 copy of the amended plaint indicating therein the name of defendant no.10, within a period of four weeks from today. Further, upon the query put

by the Court as to quantum of reasonable costs, the petitioner has stated that he would pay costs of Rs.5,000/-. This statement is accepted. Costs of Rs.5,000/- (Rupees Five Thousand Only) in the facts and circumstances of the present case, would indeed be reasonable costs.

9. This petition is therefore allowed. The orders dated 11/06/2014 and 17/04/2014 are set aside. The petitioner's R.A.E. Suit No.426/794 of 2008 is restored. The petitioner is directed to furnish amended copy of the plaint to the respondent no.8 within a period of four weeks from today. The petitioner is also directed to pay costs of Rs.5,000/- to the respondent no.8 within a period of four weeks from today. The petitioner has, in presence of the Court, paid to the respondent no.8, Rs.5,000/- which costs have been accepted by the respondent no.8.

10. Rule is made absolute in the aforesaid terms.

11. All concerned to act on basis of authenticated copy of this order.

(M. S. SONAK, J.)