

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 7144 OF 2016

Namdeo s/o Laxmanrao Koradkar and Ors. ... Petitioners

Vs.

Samiunnisa Fazaloddin Inamdar and Ors. ... Respondents

Mr. Sharad V. Natu, Advocate for the petitioners.

Mr. Shaikh Mohd. Naseer, Advocate for respondents no. 1 to 4.

Mr. S.B. Khan, Advocate for respondents no. 5 & 6.

CORAM : SUNIL P. DESHMUKH, J.

DATE : 27-07-2016.

Per Court :

1. Heard learned counsel for the appearing parties.
2. The petitioners purport to have been aggrieved by order dated 05-03-2016 on exhibit-42 in regular civil suit no. 933 of 2015, pending before the Civil Judge Junior Division, Georai, District Beed.
3. After hearing the learned counsel it transpires that, the suit has been instituted by about six persons and the sixth one was being referred to as "Syed Sami s/o Sayyed Rab", while he indeed was "Abdul Sami s/o Abdul Rab Khatib", upon realisation of such an error occurring in the title clause and corresponding errors while making reference to plaintiff no. 6 in the body of plaint, application

exhibit-42 had been moved seeking permission to carry out necessary corrections in the error occurring in the plaint. Said application has been granted by the court under aforesaid impugned order and as such the petitioners are before this court.

4. Learned counsel for the petitioners Mr. Natu, with his usual exuberance contends that necessary procedure before passing the order ought to have been followed and as such the order is untenable being suffering procedural irregularities and also for contravention of noble principles of natural justice. He submits that, the court has not at all called upon the petitioners to give their 'say' to application exhibit-42. Aforesaid apart, he submits that, for that matter, many other defendants have also lost on the opportunity to oppose the application since no 'say' had been called by the court.

5. He further submits that, the court has purportedly exercised powers under section 153 of Code of Civil Procedure, 1908, while the same would not be available for the purpose underlying the application. He further submits that if some other powers are exercised, the defendants ought to have been put on notice in respect of the same. He submits that, the application has been filed under order I, rule 10 of Civil Procedure Code, while it is not applicable. The same is for the purpose of addition / deletion of

parties and not for the purpose as has been sought under the application. It cannot be deemed to be a case of addition / deletion of parties to invoke order I, rule 10. In the circumstances, such an application is not tenable for carrying amendments in the title clause or, for that matter, in the body of the plaint.

6. Learned counsels Mr. Shaikh Mohd. Naseer and Mr. S.B. Khan, appearing for the respondents contend that, at the highest, what the court has allowed by order on the application is correction of inadvertent and typographical errors occurring in the plaint. As a matter of fact, plaintiff no.6 who has instituted the suit has not been replaced or changed. It is only since reference to his name has been erroneous in the title clause as well as body of the plaint, the application has been necessitated in order to avoid further whiling away time on arguments at a later stage in the proceedings and such a situation was sought to be averted by making the application.

7. Learned counsels further submits that, in any case, the plaintiffs would be entitled to seek correction / rectification of mistake which is inadvertent, non-intentional, non-deliberate and sheerly a human error. In the circumstances, the order passed is not liable to be faulted with. Further without admitting alternatively submits that, even if it is considered that the application has been

invoked under order I, rule 10 and the court has exercised power under section 153 of Code of Civil Procedure, 1908, yet it will have to be considered that the court cannot be faulted with for allowing the application since a proper treatment has been given to the application based on the facts and circumstances and the court has ample powers to let the parties rectify such defects and to amend the pleadings and it cannot be disputed that, it has been accordingly treated.

8. Having heard learned counsel for the parties, it appears that the petitioner is not at dispute as far as veracity of the contention in the application that, the name of plaintiff no.6 had been erroneously typed. The objection of the petitioner is that him or other defendants were not called upon to give their say, may be a procedural error, but it is not such an error that will be subversive to the interest of petitioners and the basic cause underlying. The objection mainly is of technical nature. The court even otherwise has ample power under the provisions of the Civil Procedure Code, to let a party rectify such mistakes. This would not be a case where any indulgence is required to be given to the petitioners' request. The writ petition, as such is not being entertained and is rejected.

(SUNIL P. DESHMUKH)
JUDGE

mub