

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD

WRIT PETITION NO. 7024 OF 2016

Mohd. Toufique s/o Mazaroddin alias
Sk. Rahim Farouqi and others ... Petitioners

Versus

Gous Mohiyuddin s/o Tamijoddin Farooqui
and others ... Respondents

.....
Ms. Madhaveshwari D. Thube-Mhase, Advocate for petitioners
Mr. V. D. Salunke, Advocate for respondent No.8-caveator
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CORAM : SUNIL P. DESHMUKH, J.

DATE : 18th JULY, 2016

ORDER :

1. Heard learned counsel for the petitioners.
2. Learned counsel for petitioners – original plaintiffs strenuously urges to give indulgence to her request and set aside the impugned order passed by Civil Judge, Senior Division, Ambajogai on 7th April, 2016 allowing application Exhibit-62 filed by defendant No.8 in Regular Civil Suit No.16 of 2016. She seeks intervention by this court for the reason that it cannot be strictly said that Exhibit-62 was the proceeding pursuant to Order VIII, Rule 9 of the Code of Civil

Procedure. In said context, learned counsel submits, as a matter of fact defendants had filed additional written statement without permission of the court to which petitioners had objected to and as such, upon being made aware by petitioners that in the absence of circumstances under Order VIII, Rule 9 of Code of Civil Procedure, such written statement cannot be taken on record, that Exhibit-62 was filed and the court has passed the order allowing the same. Learned counsel further submits that completely different stand is being taken in the additional written statement.

3. Learned counsel further contends that the authority cited on behalf of petitioners is directly on Order VIII, Rule 9 of the Code of Civil Procedure, whereas, authority relied on by the court is in respect of the powers of the court for condonation of lapse in submitting additional written statement during prescribed period. Learned counsel goes on to submit that even if it is be assumed for sake of argument, the application can be treated as application for amendment and, yet such an application would require different considerations. According to her, the procedure which has been followed, is not acceptable and the impugned order is, thus, liable to be set aside.

4. Perusal of the impugned order, particularly paragraphs No. 3 to 6 gives sufficient indication that the proximity of dates in filing written statement initial and subsequent one, which has been termed as additional is so close, and, thus, would be relevant consideration. The written statement filed earlier on is a bare denial written statement, deficient of the relevant contents. The defendants purport to explain their stand on the claims made by plaintiffs, in the subsequent one.

5. The defendants take support of certain judgments, as referred in impugned order.

6. The trial court has considered all the submissions as have been advanced in this writ petition and appears to have exercised power pursuant to Order VIII, Rule 9 of the Code of Civil Procedure upon bringing to its notice that the additional written statement may be necessitated in order to have effectual adjudication of the matter.

7. In the process, the trial court had let the defendants file the additional written statement a recourse as would be available under the procedure exercising discretion in favour of the defendants. May be ostensibly following up of

procedure appears to be little digressed but substantially even the same appears to have been made up. The discretion as has been exercised cannot be said to be absolutely outside the powers of the court. Looking at that even otherwise, the application could have been given different treatment, letting in the pleadings as sought under additional written statement.

8. The matter, tends to raise procedural and technically irregular aspects, since to a large extent appear to have been taken care of, it does not appear to be a case wherein this court should indulge into the request being made.

9. Writ petition, as such, is not being entertained and stands accordingly rejected.

(SUNIL P. DESHMUKH, J.)

sms