

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

WRIT PETITION NO. 5823 OF 2016

Maharashtra Agro Industries Development
Corporation Limited,
Regional Office, Godavari Complex,
VIP Road, Nanded
Through its Regional Manager,
Shri. Vishwanath Ramchandra Dudhalkar
Age: 56 years, Occ: Service,
R/o. Nanded,
Taluka and District: Nanded ... Petitioner

Versus

Jaikisan Agro Service Center
Through its Proprietor
Bapurao Rangrao Deshmukh
Age: Major, Occ: Business,
R/o. C/o. M/s. Jaikisan Krushi
Seva Kendra, Hatta, Taluka Basmat,
District Hingoli ... Respondent

.....
Mr. Amit S. Savale, Advocate for petitioner
Mr. P. N. Sonpethkar, Advocate for respondent
.....

CORAM : SUNIL P. DESHMUKH, J.

DATE : 7th JUNE, 2016

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith and heard finally
with consent of learned advocates for the parties.

2. The petitioner, purportedly, aggrieved by order dated 12th April, 2016 upon application Exhibit-15 in Regular Civil Appeal No. 140 of 2012, whereunder District Judge-1, Nanded has allowed the request of present respondent seeking certain amendment to appeal memo as contained in the application, is before this court.

3. Learned counsel for the petitioner vehemently submits that the grounds which are sought to be added under amendment would not lie for the reason that those have no basis in the pleadings of the defendant. In the circumstances, the grounds which are sought to be taken up could not have been allowed by the learned Judge.

4. Learned counsel further refers to the reasons as are appearing under paragraph No.7 in the impugned order. According to learned counsel, there is too much presumption which has no basis of facts. The presumption being entertained by the learned Judge is besides the pleadings. He, therefore, submits that the reasons given under the application and the impugned order are unsustainable.

5. Aforesaid arguments are countered by the learned counsel for the respondent – caveator, referring to that the

request has been made, is available in procedural rules, particularly, Order XLI Rule 2 of the Code of Civil Procedure, and the court has exercised the powers prescribed under the same. It can not be said that there is any defect in exercise of powers, arguments being advanced by appellant before this court relate to the merits of the contention with regard to the amendment. He submits that since the exercise of powers cannot be faulted with and the factual position would not change by allowing the amendments and no particular harm can be said to be caused to the petitioner. He submits that this is not a case, wherein indulgence be given to the petitioner.

6. Learned counsel for the petitioner submits that the amendment application has been moved in the Regular Civil Appeal after the arguments were concluded and therefore, the court ought to have been slow in consideration of the application. The impugned order does not reflect upon this respect. Taking stock of the situation, it appears that certain grounds at belated stage are sought to be added in the memo of appeal an exercise which appears to have been allowed by the appellate court.

7. In the circumstances, it would be open for the petitioner to contest veracity, correctness and merits of the grounds being urged under the amendment. For said purpose, an opportunity will have to be given to the petitioner to advance submissions in respect of the grounds taken under the amendment, including their tenability.

8. In view of aforesaid observations, I am not inclined to interfere with the order impugned in this writ petition.

9. Writ petition, as such, is not being entertained and stands rejected with aforesaid observations. Rule discharged.

(SUNIL P. DESHMUKH, J.)

sms