

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

WRIT PETITION NO. 10582 OF 2014

Pradeep Laxman Patil
Age 44 years, occup. Advocate,
R/o Balajipura, Amalner, .. Petitioner/orig.
Taluka Amalner, Dist. Jalgaon Defendant

versus

- 01 Ramanand Jaydeo Patil,
Age 60 years, occup. Business,
R/o Rambaug, Dhule Road,
Amalner, Taluka Amalner,
Dist. Jalgaon
- 02 Jagdish Ramanand Patil,
Age 29 years, occup. Business,
R/o Rambaug, Dhule Road,
Amalner, Taluka Amalner, .. Respondents/orig.
Dist. Jalgaon Plaintiffs

Mr. Girish S. Rane, Advocate for petitioner
Mr. B. R. Waramaa, Advocate for respondents

CORAM : SUNIL P. DESHMUKH, J.
DATE : 24th June, 2016

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith. Heard the parties finally, by consent.

2. Petitioner-original defendant, purporting to be aggrieved by order dated 18-10-2014 passed by Civil Judge, Senior Division, Amalner, allowing amendments under Exhibit-63 filed

by respondents-plaintiffs in special civil suit no.35 of 2013 seeking specific performance for agreement in respect of three plots and for performance of certain other terms contained in the agreement, is before this court.

3. As suit proceeded, some activities with reference to the terms under the agreement appear to have been prosecuted and plaintiffs had lodged examination-in-chief on affidavit. Subsequently, it occurred to them that certain explanation by way of abundant precaution would avoid further controversy and procrastination of the matter and as such amendments had been sought under Exhibit-63.

4. Learned counsel Mr. Rane refers to the pleadings by respondents and contends that it cannot be said that they were absolutely unaware of the permission being required for constructing bridge by the authorities concerned while the suit had been instituted. As such, after trial had commenced with lodging of affidavit of examination-in-chief, an application Exhibit-63 for amendments moved at the instance of respondents ought not to have been entertained. He submits that there is no whisper in the order impugned about any due diligence being shown by respondents before making application for amendments.

5. Mr. Rane urges this court to consider the judgment in the case of *Vidyabai vs Padmalatha*, reported in *AIR 2009 SC 1433*. The case has been pressed into service to emphasize as to when the trial could be deemed to have commenced. He, therefore, submits that since the amendments sought have been after trial has commenced and no due diligence was shown in seeking the same, having regard to amended provisions of Civil Procedure Code (Amendment) Act, 2002, the impugned order, in the process, has been rendered untenable and should be quashed and set aside.

6. Learned counsel Mr. Waramaa appearing on behalf of respondents, combating aforesaid submissions, submits that the amendments sought are nothing but clarification being given in respect of transactions and the terms between the parties and nothing new is being added nor the nature of the suit can be said to have altered by way of the amendments. He further submits that after the pleadings of petitioner, there had been certain activities about seeking permission for construction from concerned authorities and some correspondence had ensued between the defendant and said authorities and having regard to the same, amendments are sought. Activities by petitioner indeed are subsequent to institution of suit by respondents. In the circumstances, the question being raised about due diligence

is not of such a significance which should sway circumstances in favour of petitioner to decline the amendments sought.

7. Learned counsel for respondents refers to judgment in the case of *Abdul Rehman vs Mohd. Ruldu*, reported in *2012 AIR SCW 5419*. According to him, the law with regard to amendments, to a large extent, stands explained and under the same, the amendments sought by moving application Exhibit-63 would be easily accommodated.

8. He submits that in any case, amendments sought would avoid unnecessary arguments and controversy over the matters which already form part and parcel of the agreement and the activities prosecuted by the petitioner being subsequent to suit, the order impugned as has been passed by the learned judge can seldom be faulted with on any count. He, therefore, submits that the power exercised by the learned judge since being discretionary, as such, there is very little scope for this court to cause interference in the same, in its discretionary power.

9. Be that as it may, petition has been moved against grant of amendments which cannot be said to be unrelated to dispute between the parties and the court having regard to various aspects has exercised discretion in favour of the amendments sought. It would not be appropriate for this court to meddle

with the exercise of power by the learned judge which cannot be said to be in breach of following of judicial principles. The petitioner, in any case, will have liberty to defend his case against amendments, by filing amended written statement, if he so desires.

10. Since it is contended that some inconvenience is being caused to petitioner in the process of amendments, the same can be taken care of by imposing costs. In the circumstances, respondents to pay costs of Rs.10,000/- to the petitioner to be deposited in the trial court within a period of four weeks from the date of receipt of this order.

11. Writ petition stands disposed of. Rule stands discharged.

SUNIL P. DESHMUKH,
JUDGE

pnd