

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 434 OF 2016

MR. JAGDEEP YESHWANTRAO CHOWGULE. ... Petitioner
Versus
MR. NARESH SRIPAD SHIRSAT AND 8
ORS., ... Respondents

Shri Sudin Usgaonkar, Senior Advocate with Ms. Tanvi Kamat
Ghanekar, Advocate for the Petitioner.
Shri J. Sequeira, Advocate for Respondent No.2.

Coram:- C. V. BHADANG, J.

Date:- 13th June, 2016

ORAL ORDER:

The learned Senior Counsel seeks leave to amend to correct the name of the respondent no.1 as Naresh alias Avinash Sripad Sirsat. The same is allowed. The amendment to be carried out forthwith.

2. By this petition, the petitioner who is the plaintiff is challenging the order dated 10/03/2016 by which an application Exhibit 148 for condonation of delay in filing additional written statement by the second respondent (original defendant no.5) has been allowed, subject to costs of Rs.1,000/- as condition precedent.

3. The learned Senior Counsel for the petitioner has pointed out the various dates of hearings in order to demonstrate that the application was belated and, as such, could not have been allowed. It is

submitted that the petitioners had amended the plaint by filing application on 13/11/2014 and that amendment was allowed on 12/06/2015 and was accordingly incorporated in the plaint. The suit was thereafter fixed for additional written statement on 19/06/2015 and was adjourned on various dates on which the evidence was recorded. The second respondent appeared in the suit on 14/09/2015 and prayed for setting aside the ex-parte order and for permission to cross-examine the plaintiff. It is contended that however on that day, the second respondent did not move for filing of additional written statement which application was filed only on 11/01/2016. He, therefore, submits that the application could not have been allowed.

4. The learned Counsel for the second respondent has supported the impugned order.

5. On hearing the learned Counsel for the parties, I do not find that the impugned order suffers from jurisdictional error much less resulting into any manifest injustice. Once the plaint was amended the defendant has right to file additional written statement. In so far as the ground of delay in filing of the application is concerned the petitioner can be compensated by way of appropriate costs.

6. In such circumstances, the petition is dismissed, however, subject to the condition that the second respondent shall pay the costs of Rs.10,000/- to the petitioner, within a period of three weeks from

today.

C. V. BHADANG, J.

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