

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 649 OF 2016

Shri Makbul Ahmed Sayed,
Major in age,
Son of late Hanif Sayed,
Shop No.23 (Old), B-1 (New),
Kadamba Bus Stand,
Panaji Goa.

... Petitioner

Versus

Shri K. H. Meheboob,
Age 65 years,
Son of late Hanif Sayed,
R/o Sharang Garden,
Bldg., No.A-1,
Ground Floor,
Gaulem Bhat, U
Chimbel, Ilhas Goa.

... Respondent

Mr. Mahesh Amonkar, Advocate for the petitioner.

Mr. J. Ramaiya, Advocate for the respondent.

Coram:- F. M. REIS, J.

Date:- 17th November, 2016

ORAL JUDGMENT

Heard Mr. M. Amonkar, learned counsel appearing for the petitioner and Mr. J. Ramaiya, learned counsel appearing for the respondent.

2. Rule. Heard forthwith with the consent of the learned counsel.

3. Mr. J. Ramaiya, learned counsel waives service on behalf of the respondent.

4. The above petition takes exception to an order dated 04.05.2016 whereby an applications filed by the petitioner under Order I Rule 10 of the Civil Procedure Code as well as under Order VI Rule 17 of the Civil Procedure Code for amendment came to be dismissed.

5. Mr. Amonkar, learned counsel appearing for the petitioner has pointed out that the suit filed by the petitioner was for declaration and other consequential reliefs, wherein an ex-parte injunction was claimed by the petitioner which was not granted by the learned Judge. It is further pointed out that in the meanwhile the petitioner was dispossessed from the subject premises and the petitioner filed an application for amendment to incorporate such subsequent events. It is further pointed out that as the respondent who is the brother of the petitioner is also claiming to be allottee of

the subject premises on the basis of an alleged lease agreement executed by the Kadamba Transport Corporation, the petitioner sought leave to implead the said KTC. The learned counsel further submits that the learned Judge erroneously came to the conclusion that the KTC was not a necessary party and consequently, dismissed the application. The learned counsel has taken me through the impugned order to point out that the findings therein are erroneous and consequently, the impugned order deserves to be quashed and set aside.

6. On the other hand, Mr. Ramaiya, learned counsel appearing for the respondent has supported the impugned order. The learned counsel points out that the amendment application was rejected as there was no verification of the proposed averments in the plaint. The learned counsel further submits that in terms of the provisions of the Civil Procedure Code read with Civil Manual, it was incumbent upon the petitioner to verify the allegations in the proposed amendment at the first opportunity which he has failed to do and as such, the question of exercising discretion in favour of the petitioner to grant leave to amend the plaint would not arise. The

learned counsel further pointed out that the KTC is not a necessary party as it is the contention of the petitioner that he is also an allottee of the subject premises and as such according to him such claim can be established on the basis of the production of the alleged lease agreement. The learned counsel has taken me through the findings of the learned Judge to point out that there is no infirmity committed by the learned Judge while passing the impugned order which would call for interference in the impugned order.

7. I have considered the submissions of the learned counsel and I have also gone through the records. Even assuming that there was no proper verification of the averments in the proposed amendment, it is always open to the Court to direct the parties to rectify such defects. The defect in the verification is a curable defect which can be corrected either by the parties and even by a direction of the Court. Apart from that, in the present case, on perusal of the averments in the application at para 5, it clearly shows that the petitioner desires to amend the plaint in terms of the proposed amendment as reflected in Annexure 'A'. The application was supported by an affidavit. In such circumstances, the averments at

Annexure 'A' would have to be read in the application filed by the petitioner for leave to amend. As pointed out herein above, in case the Court found that there was any irregularities in the verification by the petitioner, the learned Judge while granting leave to amend the plaint can also direct the parties to verify the amended pleadings after such amendment is carried out. In such circumstances, I find that the impugned order refusing leave to amend to the petitioner on a spacious ground that there was no verification cannot be sustained and deserves to be quashed and set aside. There is no serious objection raised by the respondent to the proposed amendment. In any event, it is not disputed that the alleged averments are due to subsequent events which occurred after the filing of the suit. As such, I find that there is no reason to refuse leave to the petitioner to amend the plaint to incorporate the averments sought therein. Needless to say, the respondent is entitled to file an additional written statement disputing any such allegations sought to be incorporated by the petitioner.

8. With regard to the leave sought by the petitioner to implead Kadamba Transport Corporation Ltd., I find that it is not

disputed that the subject premises belong to KTC. The declaration sought by the petitioner that he is the lease holder/allottee of the shop is on the basis of the document executed by KTC. Reading the averments sought to be raised by the petitioner, it is apparent that there is a cloud being raised on the document executed in favour of the petitioner which can be cleared only in case a declaration sought by the petitioner is decided by the learned Judge. To examine such aspect, KTC would be a proper party to such suit. Considering that the declaration sought is with regard to the premises which admittedly belong to KTC, the findings of the learned Judge that KTC is not a necessary party cannot be sustained and deserves to be quashed and set aside. In such circumstances, I find that the learned Judge was not justified to pass the impugned order dated 04.05.2016. Hence, the impugned order dated 04.05.2016 is quashed and set aside. The petitioner is granted leave to amend the plaint and implead Kadamba Transport Corporation Ltd., as a party. Rule is made absolute in the above terms. The petition stands disposed of accordingly.

F. M. REIS, J.

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