

Mr. S. P. Thorat for Petitioner.
Mr. Ajay Khandkar and Mr. Jayant Gaikwad i/b. Ajay Khandkar & Co. for Respondent No.1.
Mr. Girish M. Agarwal for Respondents No.2 and 3.

P.C. :

2. Heard Mr. Thorat, learned Counsel for petitioner, Mr. Khandkar, learned Counsel for respondent No.1 and Mr. Agarwal, learned Counsel for respondents No.2 and 3 at length.

4. By this Petition under Article 227 of the Constitution of India, petitioner, hereinafter referred to as the plaintiff, has challenged the order dated 07.12.2015 passed by the learned Judge, City Civil Court,

Greater Mumbai. By that order, the learned trial Judge refused leave to file Chamber Summons for amending the plaint.

5. Mr. Thorat submitted that plaintiff has instituted Suit in the year 1993 for declaration of ownership of the plaintiff in respect of 300 shares among others. Pending the Suit, plaintiff took out Chamber Summons No.2333 of 2015 for amending the plaint. By the impugned order, the learned trial Judge rejected the leave. Mr. Thorat invited my attention to paragraph 3 of the impugned order. In paragraph 3, the learned trial Judge observed that in view of the amended provisions of Order VI, Rule 17 of the Code of Civil Procedure, 1908 (for short 'C.P.C.'), the amendment after commencement of trial is not permissible unless conditions stipulated under proviso thereof are satisfied.

6. As noted earlier, the Suit is of the year 1993. In view thereof, amendment of 2002 to C.P.C. is not applicable. Unamended Order VI, Rule 17 reads as thus,

“17. Amendment of pleadings. - The Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties:”

7. Perusal of the extracted portion shows that the Court has power to allow the amendment at any stage provided such amendments are necessary for the purpose of determining the real questions in controversy between the parties. The learned trial Judge Committed error in proceeding on the footing that the Suit is governed by amendment of C.P.C. made in 2002. In view thereof, on this count alone, Petition deserves to be allowed in the following terms:

- a. Impugned order is set aside;
- b. Leave to register Chamber Summons is granted;

- c. Respondents shall file reply within 3 weeks from receipt of the Chamber Summons;
- d. While deciding the Chamber Summons for amendment, the learned trial Judge will record finding as to whether the proposed amendment is necessary and shall not reject on the ground of amendment of 2002 to C.P.C;
- e. All contentions of the parties on merits are expressly kept open.
- f. Rule is made absolute in the above terms with no order as to costs.

(R. G. KETKAR, J.)

Minal Parab