

IN THE HIGH COURT OF JUDICATURE AT MUMBAI
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.4426 OF 2016

Export Inspection Council of India ... Petitioner
Vs.
Shirin Kathawalla ... Respondent

WITH
WRIT PETITION NO.5040 OF 2016

Export Inspection Council of India ... Petitioner
Vs.
Sakar S. Kathawalla ... Respondent

Ms S. I. Shah i/b. S. I. Shah & Co. for Petitioners in both the Petitions.
Mr. Vishwajit Sawant a/w. Mr. Gunjan Shah a/w. Mr. Akshay Doctor i/b. Desai
& Diwanji for Respondent in both the Petitions.

CORAM : R. G. KETKAR, J.
DATE : JULY 1, 2016

P.C. :

Heard Ms Shah, learned Counsel for petitioners and Mr. Sawant,
learned Counsel for respondent in both the Petitions at length.

2. Writ Petition No.4426 of 2016 is directed against the judgment and order dated 05.05.2014 passed by the learned Judge presiding over Court Room No.19 below exhibit-34 in T. E. & R. Suit No.193/236 of 2008 as also the judgment and order dated 18.11.2015 passed by the learned appellate Bench of the Court of Small Causes at Mumbai in (III) Revision Application No.169 of 2014.

3. Writ Petition No.5040 of 2016 is directed against the judgment and order dated 05.05.2014 passed by the learned Judge presiding over Court Room No.19 below exhibit-61 in T. E. & R. Suit No.192/235 of 2008 as also the judgment and order dated 18.11.2015 passed by the learned appellate Bench of the Court of Small Causes at Mumbai in (III) Revision Application No.170 of 2014.

4. By these orders, the Courts below rejected the applications made by the petitioners under Order VI, Rule 17 of C.P.C. for amending the written statement. As the common questions of law and fact are raised in these Petitions, the same can conveniently be disposed of by this common order. For appreciating the controversy, the facts from Writ Petition No.4426 of 2016 are considered.

5. Ms Shah submitted that respondent / plaintiff has instituted Suit against Export Inspection Council of India. However, in the cause title, they have not described petitioners / defendants as a statutory Corporation. She has taken me through the application for amendment as also the schedule of the proposed amendment and in particular, clause (a) whereby petitioners intend to add following sentence in paragraph 2 of the written statement:

“that the in the title of the plaint the plaintiff has not described the defendants are Corporation and the description of the defendants are not sufficiently identifiable and therefore the suit is not maintainable and deserves to be dismissed with costs.”

6. By clause (c), petitioners intend to add following portion in paragraph 4 of the written statement:

“In the leave and licence agreement, no where it is mentioned that defendants are a Statutory Corporation, and therefore the plaintiff is now estopped from contending that defendants are a Statutory Corporation, and therefore also the suit is not maintainable and liable to be dismissed with costs”.

7. Ms Shah submitted that having regard to the cause title of the plaint, it is evident that respondent-plaintiff did not describe that the defendants are the Corporation and the description of the defendants are not sufficiently identifiable. In the leave and licence agreement of September 1971, it is nowhere mentioned that defendants are statutory Corporation. Plaintiff is now estopped from contending that the defendants are a Statutory Corporation. The Suit is, therefore, not

maintainable, and as such, is liable to be dismissed with costs.

8. Ms Shah submitted that by the proposed amendment, defendants are not withdrawing any admission and are placing on record factual aspect. No prejudice will be caused to the respondent-plaintiff. On the other hand, Mr. Sawant supported the impugned orders.

9. I have considered the rival submissions advanced by the learned Counsel appearing for the parties. I have also perused the material on record. Perusal of paragraph 2 of the plaint shows that respondent-plaintiff has specifically asserted that petitioners-defendants are the statutory Corporation established by and / or under the Central Act, namely, the Export (Quality Control and Inspection) Act, 1963 (for short 'Act'). It is further asserted that Section 3(2) of the Act prescribes that the defendant shall be a Body Corporate, namely, Export Inspection Council of India, having perpetual succession and a common seal with power to acquire, hold and dispose off property and to contract and by the said name can sue and be sued.

10. In view thereof, I do not find that the Courts below committed any error in dismissing the application, more so when it did not satisfy the requirements stipulated in proviso to Order VI, Rule 17 of C.P.C. Hence, Petitions fail and the same are dismissed. It is expressly made clear that where a decree is appealed from by the petitioner, any error, defect or irregularity in the impugned order, affecting the decision of the case, may be set forth as a ground of objection in the memorandum of appeal as contemplated by Section 105(1) of C.P.C.

(R. G. KETKAR, J.)