

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 2538 OF 2015

Yadav K. Matale and ors.

.. Petitioners

vs.

Sunanda A. Jagale and ors.

.. Respondents

Mr. Milind M. Sathaye for the Petitioners.

CORAM : M. S. SONAK, J.

DATE : 07 JULY 2016.

P.C. :-

1] Learned counsel for the petitioners makes a statement that respondent No.1-original plaintiff in Special Civil Suit No. 493 of 2011 has been served. In fact, learned counsel for the petitioners produced affidavit of service, in which, it is made clear that respondent No.1 is duly served.

2] In the facts and circumstances of the present case and considering the order, which is proposed to be made, there is no necessity to await service upon the remaining respondents. It is pertinent to note that the remaining respondents are the defendants, who have been permitted to be impleaded as parties in the suit, in pursuance of the impugned order dated 8 January 2015.

3] The challenge in this petition is to the order dated 8 January 2015, by which, the Civil Judge Senior Division at Nashik has permitted the respondent No.1 to amend the plaint and thereby, implead certain persons as parties to the suit.

4] Mr. Sathaye, learned counsel for the petitioners, has contended that in the written statement filed by the petitioners, the petitioners had raised clear and unambiguous objection with regard to non-joinder of necessary party. The details as well as particulars had also been provided. The issues were cast on 10 June 2013 and respondent No.1 commenced his deposition on 8 August 2013. Mr. Sathaye submitted that very entertainment of the application seeking leave to amend, at such a belated stage and that too without there being any cogent explanation for delay, was an exercise in excess of jurisdiction. Mr. Sathaye submitted that the circumstance that an additional issue with regard to non-joinder of necessary party was framed on 7 February 2014, makes no difference to the matter and unless, the respondent No.1 were to have demonstrated due diligence, the learned Trial Court was not justified in grant of leave to amend.

5] Having heard the learned counsel for the petitioners, perused the record as also the impugned order, in my judgment, though there is no necessity to interfere with the impugned order to the extent, leave to amend is granted, some interference is necessary in the matter of quantum of costs.

6] From the perusal of written statement, it does appear that the petitioners had raised the objection with regard to non-joinder of the necessary parties. Particulars with regard to such parties were also stated in the written statement. However, it is only at a later stage that the petitioners made an application requesting the Trial Court to frame a specific issue in the matter of non-joinder of necessary party. On 10 June 2013, when the issues were originally framed, it does not appear that the issue relating to non-joinder of the necessary parties, was cast. Such issue was ultimately, cast only on 7 February 2014. In the light of this development, respondent No.1 applied for amendment of the plaint in order to implead some persons as parties to the suit. This is, in my judgment, sufficient explanation. In the facts and circumstances of the present case, it cannot be said that the respondent No.1 was totally indolent in the matter. Further, it is required to be noted that the restrictive proviso to Order 6 Rule 17

of the C.P.C., is not, at least in all circumstances, applicable to joinder of parties in exercise of powers under Order 1 Rule 10 of the CPC. The Court can, at any stage of proceedings, order the impleadment of parties, which it considers necessary for effective disposal of the controversy in the suit. There is accordingly, no case made out to interfere with the impugned order to the extent it grants leave to amend or implead.

7] However, Mr. Sathaye, learned counsel for the petitioners is right in contending that the respondent No.1 could have acted with greater dispatch and therefore, he must be made liable to pay substantial costs. The impugned order has awarded costs of Rs.1000/- to the petitioners. This amount is quite meagre and the same, should have been at least Rs.5,000/- considering the facts and circumstances of the present case. Accordingly, the impugned order is modified and the costs are enhanced to Rs.5,000/-. However, it is made clear that the payment of such costs shall not be a condition precedent. The costs are to be paid or deposited by the respondent No.1 within a period of fifteen days from the date of service of authenticated copy of this order. In case, the respondent No.1 chooses to deposit costs before the Trial Court, the Trial Court to

permit the petitioners to withdraw the same unconditionally.

8] The petitioners are directed to file an authenticated copy of this order before the Trial Court and also to serve a copy to respondent No.1 or the learned counsel appearing for respondent No.1 before the Trial Court.

9] Rule is made partly absolute to the aforesaid extent only. The interim order, if any, is vacated. There shall be no separate order as to costs in the present petition

10] All concerned to act on the basis of authenticated copy of this order.

(M. S. SONAK, J.)

dinesh