

FARAD CONTINUATION SHEET
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.4598/2015

Office Notes, Office Memoranda of Coram, Appearances, court's orders or directions and Registrar's orders	Court's or Judge's orders
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Mr. Sagar Joshi for the petitioner

Mr. V. S. Talkute for the Respondent

CORAM : K. K. TATED, J.

DATE : JULY 21, 2016

P.C.:

1. Heard. By this petition under Article 227 of the Constitution of India the Petitioner plaintiff challenges the order dated 12.03.2015 passed by the 5th Jt. Civil Judge, Junior Division Pandharpur below Exhibit- 148 in Regular Civil Suit No. 168/2009 rejecting the application made by the plaintiff for amendment in the plaint under Order VI Rule 17 of the Code of Civil Procedure, 1908.

2. The plaintiff made an application for amendment of plaint on 20.02.2015 on the ground that the Court Commissioner submitted his report dated 18.03.2011 and the plaintiff learnt that the defendant encroached upon some portion of the land. Hence, the plaintiff made an application for carrying out amendment to the effect that the

encroachment to be removed and the encroached portion of the land be handed over to the plaintiff. It is the contention of the plaintiff that the Trial Court has rejected their application only on the ground of delay. Same is not correct. In support of his contention he relies on judgment in the matter of *Shakuntala w/o. Balasaheb Balasaraf Vs. Ramdas s/o. Laxman Balasaraf & Ors. 2013(2) Mh.L.J. 760*. He submits that in this authority, this court has held that the delay cannot be a sole ground for rejection of application under Order VI Rule 17 of the Code of Civil Procedure, 1908. Hence, the impugned order passed by the trial court is liable to be set aside.

3. It is to be noted that, in the present proceedings the plaintiff filed suit for mandatory injunction on 13.04.2009. During pendency of the suit, at the request of the advocate for the defendant Court Commissioner was appointed. The Court Commissioner has submitted his report dated 18.03.2011 disclosing the fact that some portion of plaintiff's land was encroached upon by the defendant. In spite of having knowledge about the report dated 18.03.2011, the plaintiff made an application for amendment on 20.02.2015 when the evidence of P.W.1 was over including cross-examination. It is to be noted that, the Division

Bench of this court in the matter of *Mahadeo Maruti Bhanje v. Balaji Shivaji Pathade* 2012 (5) BCR 777 held that the trial of the suit commences from date of filing of affidavits in lieu of examination in chief of witnesses. Proviso to Order VI Rule 17 of CPC comes into play after filing of affidavits in lieu of examination in chief of witnesses

4. In the present proceedings, the petitioner has not shown any sufficient cause as to why he took more than three years for filing the said application from the date of the commissioner's report. These facts were considered by the trial court in detail. The authority cited by the petitioner in the matter of Shakuntala Balsaraf (Supra) is not applicable to the case in hand, because the petitioner has not disclosed any sufficient reason for delay of more than three years.

5. Considering these facts, I do not find any substance in the Writ Petition. Same stands rejected.

JUDGE