

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.11770/2015

Satara Jilha Nagrik Sahakari Patpedhi Ltd.

... Petitioner

Vs.

Harshad Chimanlal Bhavsar & Ors.

... Respondents

Mr. R. G. Jagtap i/b. Jagtap & Jagtap for the Petitioner

Mr. Ketan Parekh i/b. K. R. Parekh & Co. for the Respondent

CORAM : K. K. TATED, J.

DATE : MARCH 18, 2016

PC.:

1. Heard. By this petition under Article 227 of the Constitution of India the Petitioner - Defendant challenges the order dated 06.05.2015 passed by the Court of Small Causes, Mumbai below Exhibit- 18 in RAE Suit No.829/1273/2009 by which the Petitioner - Defendant's Application for amendment of written statement was rejected.

2. The learned counsel for the Defendant submits that in the present proceedings, the respondent-Plaintiff filed RAE Suit No.829/1273/2009 in the Court of Small Causes on 20.07.2009. Thereafter the Defendant filed written statement on 15.10.2010. He submits that the respondent Plaintiff filed an affidavit of evidence in lieu of examination in chief on 22.07.2014. He submits that in paragraph 4 of the said affidavit, the Plaintiff relied on letter dated 06.08.2011 written by the Defendant to the Plaintiff. He submits that as the Plaintiff relied on the subsequent events in their affidavit in lieu

of examination in chief, the Defendant made an Application for carrying out appropriate amendment in written statement explaining under which circumstances, the letter dated 06.09.2011 was issued by the Defendant to the Plaintiff. He submits that the said Application was rejected by the Trial Court by order dated 06.05.2015. He submits that in view of subsequent development during pendency of the suit and considering the affidavit of evidence filed by the Plaintiff, it was necessary for the Defendant to carry out appropriate amendment in the written statement. He submits that these facts were not considered by the Trial Court at the time of deciding the Application under Order VI Rule 17 of the Code of Civil Procedure, 1908. Hence, the impugned order be set aside and the Application filed by the Defendant under Order VI Rule 17 of the Code of Civil Procedure, 1908 for carrying out appropriate amendment in written statement be allowed.

3. On the other hand, the learned counsel for the Plaintiff vehemently opposed the Writ Petition. He submits that the Trial Court rightly rejected the Defendant's Application for carrying out appropriate amendment. Hence, there is no substance in the Writ Petition. Same be dismissed with costs.

4. Heard the learned counsel for the parties at length. I have gone through, the plaint, written statement filed by the defendant and the Application under Order VI Rule 17 of the Code of Civil Procedure, 1908 for carrying out appropriate amendment in the written statement and the impugned orders passed by the Trial Court. It is to be noted that when the Plaintiffs filed their affidavit in lieu of examination in

chief dated 22.07.2014, at that time, the Defendant learnt that the Plaintiff is relying on their letter dated 06.09.2011. Hence, the Defendant filed an Application for carrying out appropriate amendment in the written statement in view of subsequent development i.e. letter dated 06.09.2011. The Trial Court rejected the Defendant's Application only on the ground that the Defendant have an opportunity to cross-examine the witness. The said letter was duly exhibited. That cannot be a ground for rejection of the Defendant's Application for amendment of written statement. Considering these facts and the reasons disclosed by the Defendant in their Application under Order VI Rule 17 of the Code of Civil Procedure, 1908, I am of the opinion that the Defendant has made out a case for allowing the Writ Petition.

5. Hence, the following order is passed:

- a. The impugned order dated 06.05.2015 passed by the Court of Small Causes Mumbai below Exhibit- 18 in RAE Suit No.829/1273/2009 is set aside.
- b. The Application filed by the Defendant under Order VI Rule 17 of the Code of Civil Procedure, 1908 exhibit – 18 for carrying out appropriate amendment in written statement is allowed.
- c. The Defendant to carry out appropriate amendment within 3 weeks from today failing which the Writ Petition shall stand dismissed without further reference to the court.

d. If amendment is carried out within stipulated time as stated hereinabove, the Defendant to serve an amended copy of the written statement on the advocate for the Plaintiff, within 2 weeks thereafter.

d. Writ Petition stands disposed of accordingly.

JUDGE