

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO.4564 OF 2015

Sahebrao Pundlikrao Vidhale, Mahatma Fule Colony, Amravati.

-vs-

M/s Vimco Construditon & suppliers Pvt. Ltd. Amravati. Thr. Chairman and ors.

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Shri V. A. Kothale, Advocate for petitioner.
Shri R. Joshi, Advocate for respondent No.1.

CORAM : A.S.CHANDURKAR, J.
DATE : AUGUST 12, 2016

The challenge in the present writ petition is to the order passed by the trial Court rejecting the application for amendment moved by the original plaintiff.

The petitioner is the original plaintiff who has filed suit for specific performance on 09/03/2006. In the said suit, the defendant No.1-Private Limited Company was added through its Chairman, Executive Director and Directors. After the parties led evidence and the case was fixed for final arguments, the plaintiff moved the application below Exhibit-180 seeking permission to amend the plaint. By said amendment the plaintiff sought to plead about the joint and several liability of the Chairman, Executive Director as well as its Directors. According to the plaintiff, this amendment was necessary to remove any ambiguity and get an executable decree. By the impugned order the trial Court rejected the said application.

Shri V. A. Kothale, the learned counsel for the petitioners submitted that in the suit, relief was sought against the defendant No.1-Company. Though the defendant No.1-A was the signatory

to the agreement in question, no evidence was led on behalf of said defendant No.1-A and therefore with a view to get an executable decree, the amendment which was clarificatory in nature had been sought. He submitted that no prejudice would have been caused to the defendants as the relief had been sought against the defendant No.1-Company and its Chairman, Executive Director and Directors. He therefore submitted that the amendment was liable to be allowed.

Shri R. Joshi, the learned counsel for the respondent No.1 supported the impugned order. He submitted that the issues had been framed by the trial Court on 17/07/2012 and when the suit was fixed for final arguments, the application for amendment came to be moved. He submitted that issue No.13 refers to collusion between the plaintiff and the defendant No.1-A and same could not have been the basis for seeking the amendment. In absence of any averment regarding due diligence, the trial Court was justified in rejecting the application.

Having heard the respective counsel, I do not find that the trial Court committed any error when it rejected the application for amendment. The application was moved at the stage of final arguments in the suit. There are no averments in the application to indicate as to why the same could not be moved at an earlier point of time. There is no exercise of due diligence which is material while permitting an amendment after commencement of the trial. In that view of the matter, I am not inclined to interfere in writ jurisdiction. The writ petition is therefore dismissed with no order as to costs.

JUDGE

-: C E R T I F I C A T E :-

“ I certify that this Judgment/order uploaded is a true and correct copy of the original signed Judgment/order.”

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