

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD

WRIT PETITION NO.1479 OF 2015

Mahindra & Mahindra Financial
Services Ltd.,
Sanjivani Complex, 2nd Floor,
Near Ratnaprabha Motors,
Adalat Road, Aurangabad
through its Legal Manager

... PETITIONER

VERSUS

1. Ramsingh s/o Mohansing Thakur,
Age 62 years, Occu. Agriculture
R/o Sonkhed, Tq. Loha,
District Nanded

2. M/s Kanta Agencies,
Vishnu Complex, V.I.P. Road,
Nanded, through its Proprietor
Ramesh s/o Ramkishan Sarada,
Age 60 years, Occu. Business,
R/o Sonkhed, Tq. Loha,
District Nanded

... RESPONDENTS

.....
Shri S.S. Gangakhedkar, Advocate for petitioner
Shri A.S. Bayas, Advocate for respondent No.1.
.....

CORAM: S. B. SHUKRE, J.

DATED: 17th January, 2017.

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith and heard
finally by consent of learned counsel for the parties.

2. Challenge made by this petition is to the order dated

10/7/2014, passed by the Joint Civil Judge, Senior Division, Nanded in Regular Civil Suit No.419/2012. By the impugned order, the learned Civil Judge has rejected the application filed under Order VI Rule 17 of the Code of Civil Procedure seeking amendment of the written statement by the present petitioner.

3. It is not in dispute that when the amendment application vide Exh.134 was filed, the hearing of the suit had commenced already and in fact, the evidence was also closed. Therefore, as per the requirement of proviso of Order VI Rule 17, the petitioner was required to answer the due diligence test. It has been sought to be answered by giving an explanation that the letter dated 5/5/1999 was available only in Regional Office and not in the Branch Office of the petitioner's Company, the original defendant and when it was discovered later on, it was realised that this letter dated 5/5/1999, would have some material bearing on the dispute between the parties.

4. Learned counsel for the petitioner submits that, any amendment which would have a material bearing on the final result of the suit would necessarily have to be allowed in order to prevent injustice being caused to the parties. He also submits that, one of the purposes of amendments of pleadings is to enable the Court to determine the controversy effectively and finally as far as it is possible. He also invites my attention to the

view taken by learned Single Judge of this Court in the case of **Mahendrakumar Bhagwatiprasad Agrawal Vs. Virendra Bhagwatiprasad Agrawal**, reported in **2015(1) Mh.L.J. 403** on the lines put forward by the learned counsel for the petitioner.

5. According to the learned counsel for the respondent No.1, although there can be no dispute about the aforesaid purposes of the amendment of pleadings, the requirements of Order VI Rule 17 of the Code of Civil Procedure cannot be ignored and if those requirements are not fulfilled, no amendment of pleading can be allowed by the Court. In support, he refers to the case of **Smt. Jayshree Subhash Kalbande & anr. Vs. Shri Baburao Nagorao Derkar & ors.** reported in **2014 (3) ALL MR 605**, decided by the learned Single Judge of this Court.

6. I think, the learned counsel for the respondent No.1 is right. While there can be no dispute, the principle that ultimately amendment carried out to the pleadings is to serve as an effective tool for the Court to appropriately decide the controversy involved in the suit. But at the same time, the Court is also mandated by the proviso to Order VI Rule 17 of the Code of Civil Procedure to see that the amendment being allowed by it fulfills all the requirements contained in this provision of law. The Hon'ble Supreme Court in several judgments has held that,

unless and until the test of due diligence is passed by the party seeking amendment of pleadings after commencement of hearing, no amendment can be allowed.

7. In the instant case, on going through the contention raised in the application vide Exh.134, I find that, no justification has been placed on record for the inability of the petitioner to place on record the document dated 5/5/1999. Of course, it is stated by the petitioner that this document was available at its Regional Office and not at the Branch Office at Nanded, the statement cannot be considered as justifying the failure of the petitioner to place this fact on record of the case for the reason that Branch Office is not separate and different entity than the Company itself. The test of diligence, therefore, I would say, has not been cleared by the petitioner in the instant case. The learned Civil Judge has committed neither any illegality nor any arbitrariness in rejecting the application for amendment of written statement. There is no merit in the Writ Petition. The Writ Petition stands dismissed with costs. Amount of Rs.25,000/-, deposited in this Court, shall be refunded to the petitioner with accrued interest, if any. Rule is discharged.

(S. B. SHUKRE)
JUDGE

fmp/