

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

WRIT PETITION NO. 5639 OF 2016

Nisar Ahmed s/o Nasiroddin,
Age 68 years, occup. Contractorship,
R/o Ahmed Oil Mill Premises, Parli
Vaijnath, Tq. Parli Vaijnath, Dist. Beed .. Petitioner

versus

1. The State of Maharashtra ,
Irrigation Department, Mantralaya,
Mumbai – 400 032
2. The Chief Engineer, (Specified Project)
Irrigation Department, Sinchan Bhavan,
Jalna Road, Aurangabad.
3. The Superintending Engineer,
Majalgaon Canal Circle, Parli Vaijnath,
Tq. Parli Vaijnath, District Beed
4. The Executive Engineer,
Majalgaon Canal Division No. 9,
Parli Vaijnath, Tq. Parli Vaijnath,
District Beed

Mr. J. N. Singh, Advocate for petitioner
Mr. P. N. Kutti, Asstt. Govt. Pleader for respondents no. 1
Mr. B. R. Survase, Advocate for respondent no. 1

CORAM : SUNIL P. DESHMUKH, J.
DATE : 8th August, 2017

ORAL JUDGMENT:

1. Rule. Rule made returnable forthwith. Heard the learned
counsel for the parties finally by consent.

2. Special civil suit no. 36 of 1998 had been instituted by present petitioner for rendition of accounts and recovery of Rs. 5,00,000/- towards damages.

3. The petitioner – original plaintiff is before this court, aggrieved by order dated 31-03-2016 passed by civil judge, senior division, Ambajogai on application Exhibit – 106 seeking amendment to plaint in special civil suit no. 36 of 1998, whereunder petitioner's request has been rejected.

4. After hearing learned counsel Mr Singh, it appears to be a position that while aforesaid suit had been instituted, an application in 2003 had been made for reference of the matter to arbitrator pursuant to section 8 of the Arbitration and Conciliation Act, 1996. According to learned counsel, the same has been rejected in 2013 and thereafter writ petition bearing no. 6365 of 2014 had been moved by present petitioner before this high court wherein he was required to deposit a sum of Rs.1,64,000/- pursuant to decree in special civil suit bearing no. 11 of 1993 filed by present respondents in respect of very same contract. Rule had been issued in said writ petition, however, no interim relief had been granted.

5. Learned counsel Mr. Singh submits that having regard to involvement of District Collector in the matter causing damages to the petitioner, application Exhibit – 106 had been moved by the petitioner for amendments to the plaint and damages. Said application could not be moved earlier since petitioner's application pursuant to section 8 of the Arbitration and Conciliation Act was pending before trial court for thirteen years. In the circumstances, rejection of application Exhibit – 106 for amendments to the plaint on the grounds of same being delayed one is not proper.

6. On the other hand, learned counsel Mr. Survase appearing on behalf of respondent no. 4 contends that it is petitioner's suit which had been for rendition of accounts and recovery of sum of Rs. 5,00,000/- . Suit has been pending for over seventeen years. There had been no restriction or prohibition on petitioner to proceed with the suit. The reason underlying application Exhibit-106 is perhaps to see that the suit should not proceed with. He submits that all the claims being made now and addition of parties sought were very much open to be made when the suit was instituted in the first place, however, he has not done so even subsequently in reasonable period of time. He seems to have seen to it that the matter gets prolonged for one reason or the other.

7. Mr. Survase further submits, since petitioner does not feel confident about his claims in the suit getting successful, he had kept the matter pending for appointment of arbitrator which has not come through nor there is any prohibitory order from the high court. In the circumstances, suit must proceed since it is almost two decade old.

8. He submits, the court has rightly adverted to that issues have been framed long back and the suit is pending since then without any progress worth the name. The matter for arbitration is pending is a runaway argument by petitioner as there is no prohibition for prosecution of suit.

9. He submits, there is no plausible reason given for amendments now being sought. He submits, disallowing amendments is a discretion vested with court and discretion exercised for the reasons given is hardly amenable to be flawed.

10. There appears to be lot of substance in the arguments of respondents for, pendency of application for arbitrator's appointment and thereafter of writ petition before this court does not appear to be a plausible reason. It is not that immediately after decision of application under section 8 of the Arbitration and Conciliation Act, 1996, present application

Exhibit – 106 was moved. Underlying intention of application appears to be not to let the suit go ahead in its due course. In the circumstances, the observations of the trial court as would be appearing in paragraphs no. 8, 9 and 10 of its order do not appear, can be flawed on erroneous exercise of discretion. While the power has been exercised which is not erroneous, it may not be proper in the present facts and circumstances of the case to sit in further exercise of discretion.

11. The writ petition as such fails and is dismissed. Rule stands discharged.

12. This order would not be an impediment to take recourse pursuant to section 105 of Civil Procedure Code, 1908.

SUNIL P. DESHMUKH,
JUDGE

pnd