

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.12646 OF 2016

Shriniwas s/o Shrikisan Baheti,
Age-48 years, Occu-Business,
R/o Hanuman Chouk,
Shahunagar, Beed,
Tq. and Dist.Beed

-- PETITIONER

VERSUS

Shrikishan s/o Hiralal Baheti,
Age-78 years, Occu-Nil,
R/o Prem-Pannanagar,
in front of ICICI Bank,
Kaveri Plaza,
Parali (V), Tq. Parali, Dist.Beed

-- RESPONDENT

WITH
WRIT PETITION NO.12647 OF 2016

1. Shrinivas s/o Shrikisan Baheti,
Age-48 years, Occu-Business,
R/o Shahunagar, Hanuman Chouk,
Beed, Tq and Dist. Beed,

2. Rohit s/o Shrinivas Baheti,
Age-26 years, Occu-Business,
R/o as above,

3. Amit s/o Shrinivas Baheti,
Age-24 years, Occu-Business,
R/o as above

-- PETITIONERS

VERSUS

Shrikisan s/o Hiralal Baheti,
Age-78 years, Occu-Nil,
R/o Prem-Pannanagar,
In front of ICICI Bank, Kaveri Plaza,
Parali (V), Tq. Parali, Dist.Beed

-- RESPONDENT

Mr.Santosh V.Munde, Advocate for the petitioners.
Mr.P.N.Muley, Advocate for the respondent.

(CORAM : Ravindra V.Ghuge, J.)

DATE : 09/06/2017

ORAL JUDGMENT :

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

2. In both these matters, the petitioners have challenged the orders dated 07/09/2016 by which the application Exh.24 in RCS No.43/2015 and Exh.20 in RCS No.20/2016 have been rejected. The petitioners who are identical defendants in both the suits, had invoked Order 6 Rule 17 alongwith the proviso of the CPC for seeking an amendment to written statement.

3. I have heard the strenuous submissions of the learned Advocates for the respective sides.

4. In both the suits, the petitioners/defendants desire to add a short paragraph in their written statement to indicate that the plaintiff had given certain admission in a different suit. The

proposed paragraphs below paragraph No.3 in application Exh.24 and 20 respectively indicate that the admission made by the original plaintiff in RCS No.230/2013 assists the case of the defendants and hence by following the principle of 'first plead and then prove', the addition be permitted.

5. Learned Advocate for the respondent, who is the identical plaintiff in both these suits, submits that whatever may be the statement of the plaintiff in his written statement as a defendant in an earlier suit, the petitioners can always rely upon the said statement by placing a copy of the written statement on record. For the said purpose, amendment is not necessary. He, therefore, prays for dismissing both these petitions by imposing costs upon the petitioners.

6. I have considered the submissions of the learned Advocates in the light of the impugned orders which are practically identical.

7. The Trial Court has observed that these petitioners can produce the copy of the written statement filed by the original plaintiff as a defendant in RCS 230/2013 and that can be considered while adjudicating upon the two suits at issue. It is settled law that

unless laches or malafides are attributed to the conduct of the defendant, permission to amend the written statement under Order 6 Rule 17 r/w the proviso, has to be construed liberally. The strictness in considering permission to amend the plaint would not apply to the amendment to the written statement with the same intensity.

8. The Trial Court could have very well permitted the petitioners to add the said paragraph in the written statement so that the pleadings would have been completed.

9. In the light of the above, both these petitions are allowed. The impugned orders are quashed and set aside. The applications Exh.24 and 20 in RCS No.43/2015 and 20/2016 respectively, are allowed. The petitioners shall amend their written statements in both the said suits within 2 (two) weeks from today and shall not seek extension of time for the said purpose.

10. Rule is made partly absolute in the above terms.

(Ravindra V.Ghuge, J.)