

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.71 OF 2016

Baban Tukaram Kumawat

Age: 55 years, occu: Agril,

R/o At/Post Ganpur, Tq.Chalisgaon

Dist. Jalgaon

Petitioner

Versus

1 Narayan Dhondu Kumawat

Age: 55 years, Occu: Agril,

2 Eknath Dhondu Kumawat,

Age: 55 years, Occu: Agril,

3 Shri Bhaskar Dhondu Kumawat

Age: 53 years, Occu: Agril

All R/o At/Post Beldarwadi

Tq. Chalisgaon, Dist. Jalgaon

4 Lilabai Nana Patil,

Age: 49 years, Occu: Agril

R/o At/Post Kodgaon,

Tq. Chalisgaon, Dist. Jalgaon

Respondents

Mr. S. B. Bhosle h/f Mr. S.P. Brahme advocate for the petitioner

Mr. Chandrakant Patil h/f Mr. Ujwal S. Patil advocate for

respondent Nos.1 to 4

CORAM : **RAVINDRA V. GHUGE, J**

(Date : 21st June, 2017.)

ORAL JUDGMENT

1 Rule.

2 The petitioner is aggrieved by the order dated 6.11.2015, by which the trial Court has rejected the application Exh.16. The petitioner - plaintiff had prayed for an amendment to the plaint, invoking order VI rule 17 of the Civil Procedure Code, on the basis of an event, that had occurred subsequent to filing of RCS No.123/2013.

3 Learned counsel for the respondents - original defendants has strenuously opposed this petition and prayed for its dismissal with costs.

4 It is trite law that, the merits in the amendment are not to be assessed, while considering an application for amendment. It only has to be seen, as to whether there is an inordinate delay on the part of the applicant, which would be in violation of the proviso to Rule 17 under order VI and as to whether the nature of the cause of action is sought to be altered. If there is no

inordinate delay, no oblique motive or laches, which are attributable to the conduct of the applicant and if after due diligence, the application is filed, the same can be considered.

5 The Honourable Apex Court in the matter of **Chakreshwari Construction Private Limited versus Manohar Lal** ((2017) 5 SCC 212) has culled out the principles for dealing with such amendment application on the basis of its earlier Judgment. It would be appropriate to reproduce the said principles herein under:-

" 13. The principle applicable for deciding the application made for amendment in the pleadings remains no more res integra and is laid down in several cases. In *Revajeetu Builders and Developers v. Narayanswamy & Sons*, this Court, after examining the entire previous case law on the subject, culled out the following principle in para 63 of the judgment which reads as under:- (SCC p 102)

" 63. On critically analysing both the English and Indian cases, some basic principles emerge which ought to be taken into consideration while allowing or rejecting the application for amendment:-

(1) whether the amendment sought is imperative for proper and effective adjudication of the case;

(2) whether the application for amendment is bona fide or mala fide;

(3) the amendment should not cause such prejudice to the other side which cannot be compensated adequately in terms of money;

(4) refusing amendment would in fact lead to injustice or lead to multiple litigation;

(5) whether the proposed amendment constitutionally or fundamentally changes the nature and character of the case; and

(6) as a general rule, the court should decline amendments if a fresh suit on the amended claims would be barred by limitation on the date of application. These are some of the important factors which may be kept in mind while dealing with application filed under Order 6 Rule 17. These are only illustrative and not exhaustive. "

6 In the instant case, the plaintiff has alleged that, on 29.4.2014, some of the defendants had dug a canal, which in Marathi, is commonly known as a '*Chani*' which was about 3 feet wide and 3 feet deep, on the eastern side of the petitioners land gut No.104. The plaintiff lodged a Police complaint on 9.5.2014 with Chalisgaon Police Station. It is stated that, elderly people from the village of the community tried to sort out the issue and that consumed some time. Consequently, an application was filed dated 30.6.2015 before the issues were framed on 7.8.2015.

7 The Trial Court has rejected the application on the ground that the delay caused cannot be condoned.

8 In the light of the Judgment of the Honourable Apex Court in case of **Chakreshwari Construction** supra, if an amendment is imperative for proper and effective adjudication, is bonafide and refusing the amendment is likely to lead to injustice, such an amendment can be allowed.

9 The suit preferred by the petitioner is, primarily for removing encroachments, facing the western side of the respective land of the litigating sides and to restore the bandh on the south-north direction, which has been purportedly broken. Keeping the nature of the suit in focus, it is apparent that, if the plaintiff succeeds in proving the incident dated 29.4.2014, it would be within the frame work of his prayers and the cause of action put forth. Considering this aspect and the fact that the application for amendment was filed before the issues were framed, the trial Court should have allowed the application.

10 Learned counsel for the respondents submits in the alternative that, if this Court is inclined to allow this petition, costs be imposed on the petitioners as there are four defendants.

11 Considering above, this petition is partly allowed.

12 The impugned order dated 6.11.2015 is quashed and set aside. Application Exh.16 is partly allowed with the following directions:-

- (A) The petitioner shall deposit costs of Rs.4,000/- before the Trial Court on or before 15.7.2017. The defendants shall withdraw the costs in equal proportions without conditions.
- (B) The petitioner herein shall carry out the amendment in the plaint on or before 15.7.2017.
- (C) The defendants are at liberty to file additional Written Statement within four weeks there-after.
- (D) Needless to state, if either of the conditions mentioned herein above are not complied with by the petitioner, this order shall stand recalled and the impugned order dated 6.11.2015 shall stand restored.

13 Rule is accordingly made partly absolute.

(RAVINDRA V. GHUGE , J)