

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1322 OF 2015

Ganesh Kisan Kotale

..Petitioner

Vs.

Dilip Kerba Shide

..Respondent

Mr. Shashank C. Mangle, for the Petitioner.

Mr. Kedar P. Lad, for the Respondent.

CORAM :- B. P. COLABAWALLA, J.

DATE :- JUNE 22, 2017.

P. C.:

By this Writ Petition filed under Article 227 of the Constitution of India the Petitioner seeks quashing and setting aside of the order below Exhibit-51 dated 14th October, 2014. By the impugned order, the application for amendment filed by the Petitioner who is the original Plaintiff in the Suit, was dismissed. It is taking exception to this order that the present Writ Petition has been filed.

2 According to the Plaintiff, the amendments sought for

are to give further and better particulars of what is already stated in paragraph 5 of the plaint as well as the fact that the brother of the Plaintiff got married on 25th June, 2011.

3 To understand the controversy, the very few facts, and which are really undisputed, ought to be taken a note of. This Suit came to be filed by the Plaintiff in the year 2011 seeking an eviction decree against the Defendant. On 2nd March, 2012, six issues were framed by the Trial Court in this Suit. Thereafter, the Plaintiff entered the witness box to lead his evidence and his cross examination is also in progress. It is only at this late stage that the amendment application was filed on 26th September, 2014. Keeping in mind that the amendment application was made at such a belated stage and after the trial had commenced, the Trial Court rejected the application for amendment filed by the Plaintiff.

4 I have heard the learned counsel for the Petitioner as well as the learned counsel appearing on behalf of the Respondent. Order VI Rule 17 of the Code of Civil Procedure, 1908 deals with amendment of pleadings and stipulates that the Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and

all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties. The proviso to Order VI Rule 17 clearly stipulates that no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial.

5 In the facts of the present case, it is an admitted position that the amendment application filed by the Petitioner (Plaintiff) was after the trial had commenced. The issues in this case were framed as far back as on 2nd March, 2012 and thereafter the Plaintiff had entered the witness box for the purposes of leading evidence in support of his claim and was also undergoing cross-examination. This being the position, unless and until the Plaintiff is able to establish that in spite of due diligence, he could not bring on record the facts which form the subject matter of the amendment application before the commencement of the trial, the amendment application cannot be granted.

6 In the facts of the present case, it is not in dispute that the further and better particulars that are sought to be brought on

record were within the knowledge of the Plaintiff long before the trial commenced. Even the fact that his brother got married on 25th June, 2011 was within the knowledge of the Plaintiff long before the trial commenced. In fact, it is not disputed that all this was to the knowledge of the Plaintiff even prior to the framing of the issues which was done on 2nd March, 2012. This being the position, I do not find that the Trial Court was in any error in rejecting the amendment application filed on behalf of the Plaintiff at an extremely belated stage.

7 Notwithstanding this position in law, the learned counsel appearing on behalf of the Plaintiff submitted that a sympathetic view may be taken and that the amendment ought to be allowed by imposing costs on the Plaintiff. I am afraid I am unable to agree with this submission. The mandate of Order VI Rule 17 of the CPC and more particularly the proviso thereto is absolutely clear. There is no scope for sympathy or discretion being exercised by the Court, if the Plaintiff who seeks amendment is not able to establish that he was unable to bring those facts on record despite his due diligence. In the facts of the present case, as discussed earlier, all that is sought to be brought on record by virtue of the amendment application was to the knowledge of the

Plaintiff long before the trial had commenced. In this view of the matter, there is no question of taking any sympathetic view and allowing the amendment on the payment of costs.

8 For all the aforesaid reasons, I find no merit in this Writ Petition. It is accordingly dismissed. However, there shall be no order as to costs.

(B. P. COLABAWALLA, J.)