

***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 3507 OF 2014***

Smt. Lilavati Anandrao Jadhav	...Petitioner
Versus	
Shri Suhas Anandrao Jadhav & Ors.	...Respondents

Mr. Vijay D. Patil, for the petitioner.

***CORAM : SMT. SADHANA S.JADHAV, J.
DATE : 21st November, 2017.***

P.C. :

1. Heard. Rule.
2. None appears for the respondents, although served. On 31.10.2017, also this Court had observed as follows :-

“None appears for the respondents, although served. In order to give fair opportunity to the respondent, by way of last chance, stand over to 21.11.2017”.

Today also none appears for the respondents.

3. The petitioner herein happens to be the original defendant No.4 in Regular Civil Suit No.105 of 2009. The suit was filed for declaration, partition and possession of the said property. The suit was

instituted on 18.6.2009. The petitioner had filed written statement on 10.11.2009. The plaintiff happens to be the son of the original defendant No.1. The plaintiff had filed an application below below Exhibit 5 under Order XXXIX Rules 1 and 2 of the Code of Civil Procedure. The said application was allowed. Being aggrieved by the said order, the petitioner had filed Misc. Civil Appeal No.96 of 2010 before the District Court at Satara. The said appeal was dismissed and the order passed by the Civil Judge, Junior Division, Koregaon was confirmed.

4. The petitioner had then filed an application seeking amendment to the written statement filed by the petitioner. The said application incorporated the proposed amendment and the same was filed on 27.6.2012 after framing of the issues. The learned Civil Judge, Junior Division, Koregaon, by an order dated 30.1.2014 has been pleased to reject the said application along with the proposed amendment.

5. It is an admitted position that the application seeking the proposed amendment was filed at a belated stage. Hence, this Writ Petition.

6. It was contended in the said application that despite giving proper instructions in respect of the relations of the parties inter-se, i.e. the

plaintiff and the defendants, the Advocate engaged by the petitioner had not incorporated the same in the written statement. After the Misc. Civil Appeal was rejected, the petitioner had obtained a copy of the written statement from the Advocate and it was revealed, for the first time, that several contentions were taken which were not in fact raised by the petitioner. That it appeared that the written statement was not properly drafted as per the instructions. It was also submitted that the Advocate for the petitioner had insisted upon filing of the written statement within the stipulated time and, therefore, it was filed hurriedly. The petitioner was not armed with all the necessary documents to file the written statement and the same has resulted in filing an obscure written statement. The plaintiff had opposed the grant of relief and had specifically contended that all that is being submitted by way of proposed amendment was well within the knowledge of the petitioner when first written statement was made and, therefore, it would amount to changing the very nature of the written statement and hence had prayed that the application be rejected.

7. The learned Judge has considered the submissions of the plaintiff that it was well within the knowledge of the respondent about the relations of the parties inter-se and inspite of the same, the defendant No.4

has made a frail attempt to deny the relationship and therefore the said amendment could not be allowed.

8. The learned counsel for the petitioner vehemently submits that in fact the proposed amendment does not change the very nature of the written statement nor the stand taken by the petitioner while filing the first written statement. In fact it would amount to giving better particulars of the contentions raised in the first written statement, including the relations between the parties inter-se. For example, the petitioner had stated in the first written statement that the plaintiff is in no way concerned with the original defendant No.1 and therefore, she cannot claim any right in respect of the said property. However, in the proposed amendment, it is stated that the plaintiff is not the legitimate son of the defendant No.1. According to the learned counsel for the petitioner, it would only amount to giving of better particulars and has not denied the relationship. The learned counsel further submits that the same is the case that the relation of the defendant as far as his first wife is concerned and the children begotten from the first marriage.

9. Order VI Rule 17 reads as follows :-

“17. Amendment of pleadings – 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 :

Provided 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 he commencement of trial.”

It is true that the proposed amendment was sought at the belated stage. However, it cannot be overlooked that in the application itself the petitioner had specifically contended that despite exercising due diligence, the said averments did not find place in the written statement for the reasons best known to the Advocate representing the petitioner and, therefore, the said application would be covered by the proviso to Order VI Rule 17 of C.P.C. It does not appear that it was an after-thought.

10. Upon perusal of the proposed amendment to the written statement and the submissions advanced across the Bar, this Court is of the opinion that as long as the proposed amendment does not change the very nature of the contentions raised in the first written statement, it could be allowed at any stage. However, in view of the proposed amendment it may

be necessary for the learned trial Judge to frame additional issues to arrive at a just decision in the present case. It is the specific contention of the petitioner that she had given proper instructions to the erstwhile Advocate representing her. That she had hurriedly signed the written statement without going through the written statement and she had a blind faith in the Advocate representing her and had presumed that the Advocate representing her must have raised all the contentions as per her instructions. It would be necessary to allow the petition only in order to permit defendant No.4 to defend the suit properly. The petitioner cannot be deprived of her right to defend the suit although the proposed amendment was made at a belated stage and, therefore, the petition deserves to be allowed. However, in view of the fact that the suit is filed in the year 2009, and the amendment was proposed at a belated stage, i.e. on 27.6.2012, the petitioner deserves to be saddled with costs. Hence, the order :-

ORDER

- (i) The Petition is allowed.
- (ii) The order dated 30.1.2014 passed by the Joint Civil Judge, Junior Division, Koregaon, is hereby quashed and set aside.
- (iii) The application along with the proposed amendment be

accepted by the learned Civil Judge, J.D., Koregaon as the amended written statement subject to the condition that cost of Rs.10,000/- is deposited on or before 8.12.2017 in the trial Court. The plaintiff would be at liberty to file an application seeking withdrawal of the said amount.

(iv) The learned trial Court shall proceed with further stages after taking the proposed amendment on record.

(v) The petitioner shall file amended written statement and the same to be accepted only in the eventuality that it is filed on or before 8.12.2017 along with the receipt of deposit of the amount.

11. Rule is made absolute in the above terms. The Petition stands disposed of.

12. Parties to act on an authenticated copy of this order.

(SMT. SADHANA S.JADHAV,J.)