

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 3994 OF 2016

Shri Sant Goroba Shikshan ..Petitioners.
Sanstha by its Treasures and Ors

Vs
Kum. Vimal Parshuram Balid and .. Respondents
Ors.

Mr. Sugandh B Deshmukh , Advocate for Petitioners.
Mr. Tejesh Dande i/b tejesh Dande & Asso. For Respondent no.1.
Mr. Sanjeev J. Rairkar , Advocate for Respondent no.2.

CORAM : R.G.KETKAR,J.
DATE : 07/02/2017

PC:

1. Heard Mr.S.B. Deshmukh, learned counsel for the petitioners, Mr. Tejas Dande, learned counsel for respondent no.1 and Mr.Sanjeev Rairkar, learned counsel for respondent no.2 at length.

2. By this Petition under Article 227 of the Constitution of India, the petitioners, hereinafter referred to Judgment debtors 1 and 2, have challenged the Judgment and order dated 16.2.2016 passed by the learned Extra Jt. Civil Judge, Senior Division, Pune in spl. Civil Suit No. 102 of 2012. By that order, the application made by respondent no.1, hereinafter referred to as decree holder, for amending the Darkhast, is allowed.

3. In support of this petition, Mr. Deshmukh submitted that decree holder filed application for amendment of Darkhast, inter

-alia praying for deletion of paragraph 10 and claiming that she is entitled to recovery of Rs.18,31,083/- from the judgment debtors, being the back wages ,and salary till the end of December, 2015. He submitted that the judgment debtors no.1 and 2 filed reply at Exhibit 108. He submitted that the learned trial Judge while allowing the application did not consider the reply. The learned trial Judge did not give any reason as to why the proposed amendment is necessary. He submitted that once the amendment is allowed, the Executing Court will direct Judgment debtors no.1 and 2 to pay Rs. 18,31,083/-. He,therefore, submitted that the impugned order deserves to be set aside.

4. On the other hand, Mr. Dande supported the impugned order. He submitted that earlier decree holder has claimed Rs. 8,55,527/- from the Judgment debtors. However, that amount was claimed for the period from 4.7.2007 till 30.11.2011. He submitted that the judgment debtors have not permitted decree holder to resume duties and, therefore, she is now claiming Rs. 18,31,083 till 31.12.2015.

5. I have considered the rival submissions advanced by the learned counsel appearing for the parties. I have also perused the material on record. As noted earlier, decree holder has filed application at Exhibit 106 for amendment. By the impugned order, the learned trial Judge has allowed that application. It is settled principles of law that by mere allowing the application for

amendment does not mean that claim made in the amendment stands granted. Parties will have to justify their claim before Executing court and the learned trial Judge is expected to hold inquiry in that regard. In view thereof, I do not find any merit in this petition. Petition fails and the same is dismissed. It is, however, expressly made clear that where a decree is appealed from by the petitioner, any error, defect or irregularity in the impugned order, affecting the decision of the case, may be set forth as a ground of objection in the proceedings as contemplated by Section 105(1) of C.P.C.

(R.G.KETKAR,J.)