

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

WRIT PETITION NO. 4093 OF 2017

Bhiwandi Weavers Education & Anr. ... Petitioners

VS.

Momin Anjum Khawar & Anr. ... Respondents

....

Mr. N.V. Bandiwadekar i/b Mr. Sagar Mane for the Petitioner.

Mr. Shaikh Nasir Masih for the Respondent No. 1.

Mrs. K.R. Kulkarni AGP for the Respondent No. 2-State.

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Coram : **A.A.Sayed, J.**

Date : 18 April 2017

P.C. :

1 The challenge in this Petition is to an interlocutory order dated 24 March 2017 passed by the School Tribunal, New Mumbai. By the impugned order the Application of the Petitioner seeking to file additional written statement came to be rejected.

2 The impugned order reads as follows:

“Perused appln. Pleadings i.e. appeal memo and W.S. are on record. All enquiry papers are on record. W.S. filed long back on 28.4.2016. Documents filed on record 15.12.2016. Inspection of document is also completed. Matter is kept for hearing. Appellant is ready for argument.

Now this appln filed for to file amendment/additional W.S & for that reason matter be adjn today.

Admittedly there was no amendment in Appeal Memo. Enquiry conducted by respondents. All enquiry papers are with respondent. Full opportunity given to the respondents to file their W.S. & it is filed on 28.4.2016. Now question of

amendment or file additional W.S does not arises. It is directly affected on the pleadings of appellant moreover appellant cannot reply to additional/amended W.S. as per provisions of C.P.C. It is prejudice the interest of appellant. Moreover amended/additional W.S. is not filed alongwith his appln. Hence rejected”.

3 It is an admitted position that in the Written Statement itself filed on 28 April 2016, the Petitioner had sought liberty to amend the Written Statement and deal with the contents of the memo of appeal and grounds thereunder. It is seen that the memo of appeal itself runs into about 100 pages.

4 Learned Counsel for the Respondent No. 1 has argued that all the documents are already on record and there is no need for the Petitioner to file any additional Written Statement. It is submitted that the Respondent No. 1 is out of employment and hearing of the Appeal ought not to be delayed.

5 In my view, in the interest of justice, an opportunity is required to be granted to the Petitioner to file the additional Written Statement. No prejudice would be caused to the Respondent No. 1/Original Appellant if the Petitioner is allowed to file the additional Written Statement. The hearing of the arguments in the appeal is yet to begin and the Respondent No. 1 can be compensated by imposing appropriate costs. Hence the following order:

ORDER

(i) The Petitioner is permitted to file the additional Written Statement subject to cost of Rs. 20,000/-, to be paid by the Petitioner to the Respondent No. 1.

(ii) The statement of the learned Counsel for the Petitioner is recorded that the additional Written Statement will be filed within one week from today.

(iii) It would be open for the Appellant to file a Rejoinder if so advised and if such practice is prevailing in the School Tribunal as suggested by learned Counsel for the Petitioner.

(iv) Hearing of the Appeal is expedited.

(v) The statements of learned Counsel for the parties are recorded that the parties will appear before the School Tribunal on 25 April 2017 at 11 a.m.

6 The Writ Petition is disposed of in the aforesaid terms.

7 All concerned to act on an authenticated copy of this order.

(A.A.Sayed, J.)