

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

WRIT PETITION No. 6263 OF 2013

Mr. Shankar Khandu Patil (since deceased)

Through LRs.

....Petitioners

Vs.

Shantaram Lorya Bhandari

...Respondent

Mr. Dnyaeshwar Deshmukh for Petitioners

Mr. Raju Suryawanshi for Respondent

CORAM : M.S. SANKLECHA, J.
WEDNESDAY, 23RD AUGUST, 2017

P.C.

1. This petition challenges the order dated 1st March, 2013 passed by the Joint Civil Judge, Junior Division, Ulhasnagar. By the impugned order, the Respondent; (Original Plaintiff) application for addition of the parties to the plaint and amendment to the plaint under Order 1 Rule 10 and Order 6 Rule 17 respectively of the Civil Procedure Code (Code) was allowed.

2. The impugned order allows the amendment seeking to add the

Municipal Corporation as a party defendant as well as bringing on record the averments with regard to the construction carried out on the suit property. The impugned order proceeds on the basis that though the suit as filed was only for an injunction, the amendment seeks to bring on record subsequent events viz. construction on the property granted to the plaintiff after filing of the suit. The impugned order holds that bring on record the subsequent events become necessary to avoid multiplicity of the proceedings.

3. Mr. Deshmukh, learned counsel for the Petitioners in support of the application submits that the proposed amendment would change the nature of the suit as the suit has originally filed was only seeking injunction restraining the defendants from making any construction on the suit property while the amendment proposes to demolish the unauthorized construction carried out on the suit property. It is also submitted that the construction had already been completed in the year 2005 at the time of filing of the suit and, therefore, the amendment ought not to have been allowed.

4. The impugned order only brings on record the subsequent events. It is these subsequent events which led to the addition of the Corporation as a party. These amendments are necessary to avoid multiplicity of proceedings. In any case, the grievance of the Petitioners is with regard to the merits or sustainability of the amendment to the plaint to the effect that construction was completed in 2005 is an issue which could be gone into at the time of the trial including his submission that the civil court would have no jurisdiction to adjudicate in respect of unauthorized construction work which is a subject matter of action by the Municipal Corporation.

5. Mr. Deshmukh also relied upon the judgment in the case of **Reveajeetu Builders and Developers Vs. Narayanswamy and Sons and Ors. [(2009) 10 Supreme Court Cases 84]** wherein the factors to be taken into consideration while allowing an amendment application has been set out. To my mind while exercising the discretion to allow the amendment, these factors have been considered.

6. In any case the exercise of discretion in the present facts cannot be said to be perverse and/ or so arbitrary as to warrant interference in my

supervisory jurisdiction under Article 227 of the Constitution of India.

7. Mr. Deshmukh, learned counsel for the Respondents states that in view of the stay to the trial granted by this Court, the Petitioner has not filed his additional written statement. Therefore, to be permitted to file his additional written statement. In case the Petitioner does file an additional written statement on the next date before the Trial Court then the same would be taken on record by the Court.

8. The writ petition is dismissed. No orders as to costs.

[M. S. SANKLECHA, J.]