

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

WRIT PETITION NO. 4495 OF 2015

Zarir Edi Mahava

.. Petitioner

v/s.

Roda F. Engineer & Ors.

.. Respondents

Mr. Sanjay Jain a/w Mr. Vishal Thaker a/w Ms. Anjali Trivedi for the
petitioner

Mr. Ivor Peter D'Cruz for respondent no.1

CORAM : M.S. SANKLECHA, J.

DATED : 11th SEPTEMBER, 2017

PC.

1. This petition under Article 227 of the Constitution of India challenges the order dated 16th April, 2017 passed by the City civil Court at Mumbai. By the impugned order, the petitioner's (original plaintiff's) application for amendment to the plaint under Order 6 Rule 17 of the Civil Procedure Code (Code) was dismissed.

2. Notice was issued to the respondents on 5th May, 2015 indicated that the petition is likely to be disposed of finally at the stage of admission.

3. The impugned order dismisses the amendment application on the ground that the proposed amendment does not to bring on record the subsequent events as submitted by the petitioner and also on the ground that the proposed amendment is not necessary to bring out the real controversy between the parties. Thus, the same is an abuse of the process of law.

4. The impugned order to the extent it holds that the proposed amendment cannot be allowed as the events are not subsequent events, contrary to the contention of the petitioner. In fact, certain paragraphs of the proposed amendments do on the face of it indicate subsequent events i.e. dates of documents being brought on record are after the filing of the suit. The impugned order has merely rejected the amendment application by stating that the same do not bring on record subsequent events. This without indicating any reasons why it is so, when in some of the paragraphs of the proposed amendments, the documents which have been referred to appear to be post filing of the suit. This non consideration of the dates of documents showing it is subsequent to the filing of the suit should have been addressed to point out how the documents indicating

dates subsequent to filing of suit are not events subsequent to the suit. Mere rejection of the proposed amendments without reasons is bad.

5. Further, the impugned order also holds that the petitioner has not shown that in the absence of proposed amendment it does not bring out as to what is the real controversy in the suit. The affidavit in support of the motion does indicate that amendments are necessary for effective adjudication of the controversy between the parties. The impugned order does not deal with this and proceeds to dismiss the application on the ground that the party has not shown that in the absence of amendments, the real controversy is not brought out. Mere recording of a conclusion does not satisfy the requirement of an order passed by the judicial authority.

6. An judicial order must be an order informed / supported by reasons. This the impugned order lacks. Therefore, the impugned order dated 16th April, 2015 is quashed and set aside. The Chamber Summons is restored to the trial Court for fresh consideration and disposal on merits with atleast a modicum of reasons as to why the amendments should not be allowed.

7. Needless to state that the impugned order has been set aside only because it does not indicate reasons in support of the conclusion as arrived at. The trial Court may have reasons to disallow the amendment however, the same should be reflected in the order. In the absence of the reasons being indicated the order is vulnerable. However, it is made clear that I have not examined the merits of the proposed amendments and the trial Court is to consider the same without being influenced by any observation herein save and except that a judicial order must be informed with reasons.

8. Petition allowed is above terms. No order as to costs.

(M.S. SANKLECHA, J.)