

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

WRIT PETITION NO.5871 OF 2009

Dashrath Balu Satav & Anr.

...Petitioners

vs.

Savitrabai Laxman Satav & Ors.

...Respondents

Mr. Ashok B. Tajane for the Petitioners.

Mr. Avinash Avhad for Respondent Nos.1 and 2.

CORAM : SMT. SADHANA S. JADHAV, J.

DATE : 22nd November, 2017

P.C.:

. Heard. Rule. Rule is made returnable forthwith with the consent of the parties. The Petitioners herein happens to be the original Defendants in RCS No.951/2004. During the pendency of the suit, the Plaintiffs had filed an application seeking impleadment of additional Defendant i.e. Defendant No.8 to the suit. The Defendant No8 was added as party Defendant. In view thereof, application was filed by the Defendants below Exh.87 praying for amendment of the original written statement. Learned Court was pleased to reject the same by order dated 21/4/2009.

2. The Court had taken into consideration the fact that earlier application for amendment to the original written statement was rejected. However, in the subsequent application the proposed amendment included the paragraphs which were proposed on the earlier occasion and which were rejected.

3. Being aggrieved by the order dated 21/4/2009 the Defendant

Nos.2 and 6 have filed the present petition. By order dated 29/11/2016 notices were issued to the Respondents. This Court had observed that instead of rejecting the whole of the additional written statement, the learned court ought to have considered the amendment to the extent of impleadment of Defendant No.8 and nothing beyond that. Besides, order was also challenged by the Petitioners before the Hon'ble Apex Court by filing Special Leave Petition No.6001/2009. On 12/7/2010 the Hon'ble Apex Court had passed an order granting leave and until further orders further proceedings in Civil Suit No.951/2004 were stayed. By order dated 1/8/2017 SLP was rejected. The Hon'ble Apex Court had observed the following:

“ We have heard learned counsel for the appellants.
We find no merit in this appeal.
The appeal is accordingly dismissed.”

4. The learned counsel for the Petitioner has prayed for bringing legal heirs on record however, it shall not be necessary as the writ petition is of the year 2009. That the subsequent events of bringing legal heirs on record would not affect the merits of the case. The Trial Court ought to have allowed the whole of the written statement filed by the Defendant. It is also submitted that without impleading the Defendant, Defendant No.8 had filed counter claim and it would be necessary to bring him on record in the present writ petition as he has filed the counter claim. However, this Court is of the opinion that it would not be necessary as the issue involved in the present writ petition is only restricted to the filing and acceptance of the whole of the additional written statement of Defendant Nos.2 and 6. This Court cannot be oblivious of the fact that Regular Civil Suit No.951/2004 has been instituted almost 13 years ago and only because of the pendency of the petition in the higher Court, the suit cannot proceed and therefore it would not be necessary to consider the subsequent events in the present petition. Moreover this Court is not exercising Appellate

jurisdiction and therefore there is no question to consider the subsequent events.

5. Hence, it would be suffice to say that the learned Trial Court may consider the amendment to the extent of added Defendant i.e. Defendant No.8 and nothing beyond that. In view of this, the Petition deserves to be partly allowed. Amendment to the additional written statement be allowed only to the extent of amendment carried out in the plaint and addition of Defendant No.8. Rule is discharged. The Petition stands disposed of with above directions.

(SMT. SADHANA S. JADHAV, J.)