

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 9509 OF 2017

Clestino Saldhana	..	Petitioner
vs.		
Mary Kutty Emmanuel & Ors.	..	Respondents

Mr. R. A. Thorat – Senior Advocate i/b. Mr. P. J. Thorat for
Petitioner.

Mr. Vachan Badke i/b. M/s. Chitnis Vaity & Co. for Respondent No.
1.

CORAM : M. S. SONAK, J.
DATE: 22 AUGUST 2017

P.C :

- 1] Not on board. In view of urgency, taken on production board.
- 2] Heard learned counsel for the parties.
- 3] In this case, the learned trial Judge has granted to the respondent no. 1 – original plaintiff leave to amend the plaint. No doubt, such leave was granted after the trial in the suit had commenced. The plaintiff, had already filed affidavit in lieu of examination-in-chief in the year 2011. However, for almost four years cross-examination had not commenced. Even before the cross-examination could commence, leave to amend came to be applied for.

4] The learned trial Judge has held that the proposed amendment goes to the root of the matter and the same is necessary to decide the dispute between the plaintiff and the defendants. The learned trial Judge has also held that such amendment is necessary in order to have a final and effective adjudication.

5] Mr. Thorat, learned Senior Advocate for the petitioner points out that the proviso to Order VI Rule 17 of the CPC, particularly, in the matter of explaining due diligence has been totally ignored. He points out that the proposed amendment involves withdrawal of admissions. In any case, the grant of leave would introduce contradictory pleas in the plaint. He submits that this is impermissible and therefore, the impugned order should be set aside as being in excess of jurisdiction.

6] In the peculiar facts of the present case, there is no necessity to interfere with the impugned order in the exercise of extra ordinary jurisdiction under Article 227 of the Constitution. Merely because an order may not be right, there is no obligation to exercise extra ordinary jurisdiction under Article 227 of the Constitution. The issue as to whether the order is right or not can always be agitated in a substantive appeal, in case, the suit is ultimately decided against

the petitioner. Accordingly, without expressing any opinion on the merits of the impugned order, this petition is not entertained. However, it is made clear that in case the suit is ultimately decided against the petitioner and the petitioner chooses to institute a substantive appeal against such decision, then, the petitioner, will be entitled to challenge the impugned order in such substantive appeal.

7] At the request of Mr. Thorat, time for filing additional written statement in response to the amended plaint is extended by a period of four weeks from today.

8] With liberty as aforesaid, the petition is disposed of. There shall however be no order as to costs.

(M. S. SONAK, J.)

Chandka