

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

WRIT PETITION NO. 436 OF 2017

Shri Lalitkumar Shriram Pandey

..Petitioner.

Vs

Shri Ramanand Bhagwatiprasad
Harlalka

.. Respondent

Mr. Sandeep Mishra, Advocate for Petitioner.

**CORAM : R.G.KETKAR,J.
DATE : 16/01/2017**

PC:

1. Heard Mr.Sandeep Mishra, learned counsel for the petitioner at length.
2. By this Petition under Article 227 of the Constitution of India, the petitioner, hereinafter referred to as 'defendant', has challenged the Judgment and order dated 23.11.2016 passed by the learned Ad-hoc District Judge-2, Thane, below Exhibit- 17 in Civil Appeal No.82 of 2013. By that order, the learned District Judge rejected the application made by the defendant who is appellant before the District Court under Order VI, Rule 17 of the C.P.C. for amending the written statement.
3. It is not in dispute that the defendant had earlier filed application at Exhibit-59 for amendment of the written statement in the trial Court. By order dated 26.9.2012, the learned trial Judge rejected the application. Aggrieved by that decision, the defendant instituted Writ Petition No.11000 of 2012 in this Court.

By order dated 30.11.2012 this Court dismissed the writ petition by passing the order to the following effect.

“The order impugned in the aforesaid writ petition is purely interlocutory and procedural order capable of challenge in an appeal from final order in main proceedings, if the same is adverse to the petitioner. Therefore, I am not inclined to interfere with the impugned order in the jurisdiction of this Court conferred under Article 227 of the Constitution of India. The writ petition is accordingly disposed of.”

This Court declined to interfere with the order passed by the trial Court on the ground that the order impugned in the petition is purely interlocutory and procedural order capable of challenge in an appeal from final order in main proceedings, if the same is adverse to the petitioner. In other words, the Court gave liberty to the defendant to challenge the order dated 26.9.2012 by raising grounds in the substantive appeal as per Section 105(1) of C.P.C. The suit was decreed against the defendant. Aggrieved by that decision, the defendant preferred appeal and pending that appeal took out application Exhibit-17 for amending the written statement. By the impugned order, the learned District Judge has rejected the application.

4. In support of this petition, Mr.Mishra strenuously contended that as per the liberty granted by this Court, the defendant has filed application Exhibit-17 for amending the written statement.

5. It is not possible to accept this submission. I have already extracted the order passed by this Court on 30.11.2012. In my opinion, the application filed by the defendant is wholly

misconceived. It was absolutely unnecessary for the defendant to file application for amending the written statement, more so in the light of the order dated 30.11.2012 passed by this Court.

6. In paragraph 15, the learned District Judge also observed that the amendments which are sought by the defendant are nothing but points of arguments and those are already covered in the grounds of appeal. Therefore, the amendments sought are not necessary to be carried out in the written statement. In view thereof, I do not find that the learned District Judge has committed any error in passing the impugned order. Petition fails and the same is dismissed.

7. As the Application was wholly unnecessary, it is necessary to impose costs on the defendant for wasting District Court's time as also this Court. Hence, Petition is dismissed with costs of Rs. 25,000/-. Costs shall be deposited by the defendant in this Court within four weeks from today and shall produce receipt before the District Court. Registry is directed to transmit this amount to Tata Memorial Hospital and Cancer Research Institute, Parel, Mumbai.

8. List the Petition for reporting compliance after six weeks.

(R.G.KETKAR, J.)