

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 957 OF 2018

SANDEEP SUVALAL CHALLANI
VERSUS
MUKUND DEVIDASRAO NAVPUTE

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Advocate for Petitioners : Shri Adwant S.V. & Smt. N.B.Kamble

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CORAM : RAVINDRA V. GHUGE, J.
Dated: January 24, 2018

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PER COURT :-

1. The petitioner is aggrieved by the order dated 14.9.2017 passed by the trial Court, by which, application Exhibit 34 filed by the defendant in RCS No.1082 of 2012 has been allowed and the defendant has been permitted to amend the Written Statement .

2. Learned counsel for the petitioner has strenuously criticized the impugned order, primarily, on the following grounds:-

(a) Though the CPC permits an amendment under Order VI Rule 17 at any stage, it would not mean that the amendment should be casually permitted, without taking into account the aspect of due diligence.

(b) An amendment should not be permitted when the trial

has commenced.

(c) Laches and ulterior motives on the part of the defendant have to be considered.

(d) An amendment changing the nature of the suit cannot be permitted.

(e) After ten reported judgments are cited, no Court should pass a judicial order without evening referring to the said citations.

3. I have considered the submissions of the learned counsel, have gone through the petition paper book and the eleven judgments cited by him.

4. The petitioner has cited the following judgments:-

- (i) S. Malla Reddy Vs. Future Builders Cooperative Housing Society and others - (2013) 9 SCC 349,
- (ii) Ajendraprasadji N. Pandey Vs. Swami Keshavprakeshdasji (2006) 12 SCC 1,
- (iii) Sushil Kumar Jain Vs. Manoj Kumar and another - (2009) 14 SCC 38,

- (iv) J. Samuel and others Vs. Gattu Mahesh and others - (2012) 2 SCC 300,
- (v) Rajkumar Gurawara Vs. S. K. Sarwagi and Company - (2008) 14 SCC 364,
- (vi) Chander Kanta Bansal Vs. Rajinder Singh Anand - (2008) 5 SCC 117,
- (vii) Girish Bapusaheb Bhor Vs. Ambadas Chandrabhan Perne- 2015 (2) LJSOFT 97,
- (viii) Shahurao Bhausahab Salve Vs. Shantilal Manga Chaudhari - MANU/MH/1813/2014
- (ix) Malu Gaonkar and others Vs. Gilman Fernandes and others - 2014 CJ (Bom) 2280,
- (x) Suryakanta Ishwar Lokhare Vs. Annapurna Nilkanth Shende- 2014 (7) ALL MR 540 and
- (xi) Mahadeo Vs. Balaji - MANU/MH/2426/2012.

5. Upon considering the said judgments, it is obvious that the petitioner has cited them for the purpose of canvassing that due diligence cannot be ignored. If the applicant has not put forth any specific reasons and has not tendered an explanation as to why the amendment could not be carried out before the commencement of the trial, such an application cannot be allowed. The ratio laid down by the Honourable Apex Court in Sushilkumar Jain (supra) and J. Samuel (supra) as well as the view taken in the other judgments, do crystallize the point that due diligence cannot be ignored and an amendment, especially sought at a delayed stage should not be permitted. A view taken by this Court in Girish (supra) and in Smt.

Suryakanta (supra) have also been relied upon.

6. It needs to be noted that the defendant has stated in application Exhibit 34 filed on 19.9.2013 that though the Written Statement was filed within time, he has inadvertently failed to set out certain material aspects in the Written Statement with regard to the amount of consideration agreed as mentioned in the sale deed and other attending circumstances. Paragraph Nos. 9A to 9C are the proposed amendment. It is also stated that the defendant got his land measured and it was revealed that the total area of 8 acres was found to be less by two acres and 20 gunthas. Further contention is that the defendant then approached the father of the plaintiff with regard to the short fall in the land and prayed for reduction in the consideration amount and that led to a dispute between the parties.

7. It needs mention that the plaintiff has tendered an affidavit in lieu of examination in chief and the applicant / defendant sought adjournment and then filed the application for amendment. A trial can, therefore, be said to have commenced.

8. It is also strenuously canvassed that the theory putforth by the defendant in the Written Statement is different from the proposed amendment. An inconsistent stand is being taken and the

amendment would have destructive effects in the sense that it would affect the case of the defendant himself. It requires no debate that a defendant can take an inconsistent stand and if such inconsistency is of a serious nature, it is bound to affect the case of the defendant.

9. In so far as due diligence is concerned, the suit cannot be said to be very old so as to mean that several years have passed by and the defendant now desires to amend the Written Statement at the fag end of the trial. RCS No.1082 of 2012 was in fact filed in 2010 and was later renumbered. Written Statement was filed within time. Before the cross-examination of the plaintiff could be completed, the application for amendment was filed on 19.9.2013. The said application has been decided by the trial Court on 14.9.2017 after about 4 years. Nevertheless, the suit has not progressed and is still at the stage of cross-examination of the plaintiff.

10. The Honourable Apex Court in the matter of Kailash Vs. Nanhku and others [(2005) 4 SCC 480 - 3 Judges' Bench], has concluded in paragraph Nos.27 to 29 as under:-

"27. Three things are clear. Firstly, a careful reading of the language in which Order VIII, Rule 1 has been drafted, shows

that it casts an obligation on the defendant to file the written statement within 30 days from the date of service of summons on him and within the extended time falling within 90 days. The provision does not deal with the power of the court and also does not specifically take away the power of the court to take the written statement on record though filed beyond the time as provided for. Secondly, the nature of the provision contained in Order VIII, Rule 1 is procedural. It is not a part of the substantive law. Thirdly, the object behind substituting Order VIII, Rule 1 in the present shape is to curb the mischief of unscrupulous defendants adopting dilatory tactics, delaying the disposal of cases much to the chagrin of the plaintiffs and petitioners approaching the court for quick relief and also to the serious inconvenience of the court faced with frequent prayers for adjournments. The object is to expedite the hearing and not to scuttle the same. The process of justice may be speeded up and hurried but the fairness which is a basic element of justice cannot be permitted to be buried.

28. *All the rules of procedure are the handmaid of justice. The language employed by the draftsman of Proconsul law may be liberal or stringent, but the fact remains that the object of prescribing procedure is to advance the cause of justice. In an adversarial system, no party should ordinarily be denied the opportunity of participating in the process of justice dispensation. Unless compelled by express and specific language of the Statute, the provisions of the CPC or any other procedural enactment ought not to be construed in a manner which would leave the court helpless to meet extraordinary situations in the ends of justice. The observations made by*

Krishna Iyer, J. in Sushil Kumar Sen v. State of Bihar : [1975] 3 SCR 942, are pertinent:-

" The mortality of justice at the hands of law troubles a Judge's conscience and points an angry interrogation at the law reformer.

The Proconsul law so dominates in certain systems as to overpower substantive rights and substantial justice. The humanist rule that procedure should be the handmaid, not the mistress, of legal justice compels consideration of vesting a residuary power in judges to act *ex debito justitiae* where the tragic sequel otherwise would be wholly inequitable.... Justice is the goal of jurisprudence -- Proconsul, as much as substantive."

29. In The State of Punjab and Anr. v. Shamlal Murari and Anr. : [1976] 2 SCR 82, the Court approved in no unmistakable terms the approach of moderating into wholesome directions what is regarded as mandatory on the principle that "Proconsul law is not to be a tyrant but a servant, not an obstruction but an aid to justice. Procedural prescriptions are the handmaid and not the mistress, a lubricant, not a resistant in the administration of justice." In Ghanshyam Dass and Ors. v. Dominion of India and Ors. : [1984] 3 SCR 229, the Court reiterated the need for interpreting a part of the adjective law dealing with procedure alone in such a manner as to sub-serve and advance the cause of justice rather than to defeat it as all the laws of procedure are based on this principle."

11. The Honourable Apex Court has also crystallized the law that

when technicalities are pitted against substantive rights, the endeavour of the Court should be to do justice and give a fullest opportunity to a litigant to conduct his case. It cannot be disputed that in mofussil areas, the learned Advocates may not be very articulate and specific in their pleadings. The litigants are illiterate / semi literate agriculturists from rural areas, who may not give proper briefing to the learned Advocate while drafting the plaint or a Written Statement. Such aspects in relation to such litigants of the rural areas have to be kept in mind while permitting an amendment.

12. It, however, cannot be ignored that if mischief, oblique motives or ulterior motives are attributed or are attributable to the conduct of a litigant, the application for seeking amendment can be considered differently. In the instant case, since the suit was about 3 years' old, when the application for seeking an amendment was filed, it cannot be said that laches are attributable to the conduct of the defendant or that mischief has been played.

13. Considering the total effect of the above factors, I do not find any merit in this petition.

14. The learned counsel for the petitioner has raised a serious grievance about the trial Court having ignored the judgments cited

and having not even referred to a single judgment. On this count, the learned Advocate is justified in making a grievance. In a given case, though the litigating sides may cite any number of judgments, the Court is expected to go through the ratio laid down in such judgments and consider the applicability of those judgments on the principle of *ratio decidendi*. The law of precedents cannot be ignored by any Court.

15. I do find from the impugned order and in the light of the list of citations placed on record before the trial Court by the learned Advocate for the petitioner that the trial Court has not even mentioned the citations in its order, much less, referred to them. On this count, I deem it proper to strike a note of caution to the learned Judge - 5th Joint Civil Judge J.D., Aurangabad, to ensure, henceforth, that judgments upon being cited by the litigating sides would be considered by him and such consideration should be reflected in a judicial order.

16. The learned Registrar (Judicial) of this Court is requested to place a copy of this order before the learned Principal District Judge, Aurangabad as well as the learned 5th Joint Civil Judge J.D. Aurangabad and further request the learned Principal District Judge to bring this aspect to the notice of the learned Judge who has

passed the impugned order.

17. With the above observations, this petition is disposed off.

(RAVINDRA V. GHUGE, J.)

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