

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 1441 OF 1997

Suyog Enterprises
Partnership firm through
its partner Phulchand Dilsukh
Pande, age 41 years,
Occ. Business, r/o Kopargaon,
District Ahmednagar. ..Petitioner

Versus

Sangamner Bhag Sahakari
Sakhar Karkhana Limited,
Amrutnagar, PO Sangamner,
District Ahmednagar. ..Respondent

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Advocate for Petitioner : Shri S.S.Kulkarni h/f Shri S.D.Kulkarni.
Advocate for Respondent : Shri S.K.Shinde
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CORAM : RAVINDRA V. GHUGE, J.
Dated: June 19, 2018
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ORAL JUDGMENT :-

1. The petitioner / original disputant is aggrieved by the order passed by the Maharashtra State Cooperative Appellate Court dated 6.9.1996, by which, Appeal No.123 of 1995, filed by the respondent has been allowed and the order of the Cooperative Court dated 2.8.1995 permitting an amendment has been quashed and set aside.

2. I have considered the submissions of the learned Advocates for the respective sides. Learned counsel for the respondent has strenuously supported the impugned order. Contention is that certain figures of supply of cement bags and amounts to be recovered are being altered by the petitioner after seven years of the institution of Dispute No.110 of 1988 before the Cooperative Court at Kopargaon. The delay caused cannot be condoned. After the issues have been cast, the amendment was allowed, which is impermissible. The appellate Court has rightly interfered with the order of the Cooperative Court and has disallowed the amendment.

3. I find from the records that the issue in between the litigating sides is with regard to the supply of cement bags and the unpaid amounts by the respondent. As the dispute progressed before the Cooperative Court, the petitioner / disputant realized that he has wrongly mentioned the figure of 2400 as the supply of cement bags for which the firm had received the payment. It was noticed that the firm had received the payment from the respondent for 1600 bags and as such, the figure 2400 was required to be replaced by 1600. Similarly, an amount of Rs. 60,000/- over and above which is mentioned in the dispute claim, was not claimed by the disputant

inadvertently. Since the recording of evidence had not commenced, the disputant has moved the application for amendment on 16.6.1995.

4. I do not find that the Cooperative Court had committed any error in allowing the amendment keeping in view that multiplicity of litigation was to be avoided and the disputant had approached the Cooperative Court before the commencement of the recording of oral evidence. This aspect was lost sight of by the appellate Court, which passed the impugned order on 6.9.1996 and on account of the admission of this petition by this Court on 3.7.1997, the litigating sides are stuck in litigation for 21 years at the stage of an amendment to the plaint.

5. Considering the above, this petition is allowed. The impugned order dated 6.9.1996 passed by the appellate court is quashed and set aside and Appeal No.123 of 1995 filed by the respondent stands rejected. Consequentially, the order of the Cooperative Court dated 2.8.1995 stands restored.

6. In view of the above, it is ordered as under:-

(A) The litigating sides shall appear before the

Cooperative Court at Kopargaon in Dispute No.110 of 1988 on 7.7.2018.

(B) The petitioner shall forthwith amend it's plaint on the same date, if not already amended.

(C) The Cooperative Court shall decide the said dispute as expeditiously as possible and in any case on/or before 31.12.2018.

(D) In so far as costs are concerned, the petitioner would be liable to pay costs of Rs.10,000/- which will be adjusted / set off against the amount that would be recoverable from the respondent in the event the petitioner succeeds.

(E) In the event the petitioner fails in the said dispute and suffers an adverse order, it shall deposit costs of Rs.5,000/- in the Court, which the respondent shall withdraw from the Cooperative Court.

(F) The litigating parties shall refrain from seeking adjournments on unreasonable and trivial grounds.

7. Rule is made absolute in above terms.

(RAVINDRA V. GHUGE, J.)

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