

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

29 WRIT PETITION NO. 4360 OF 2017

SHIVSHARANAPPA RACHAPPA CHITKOTE AND OTHERS
VERSUS
MUNICIPAL COUNCIL LATUR THROUGH ITS CHIEF OFFICER
AND ANOTHER

.....

Advocate for Petitioners : Mr. Natu Sharad V.
Advocate for Respondent No.1 : Mr. Ajinkya Deshmukh h/f
Mr. A. V. Hon

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CORAM : V. K. JADHAV, J.
DATED : 20th FEBRUARY, 2018

PER COURT:-

1. Heard finally by consent at admission stage.
2. The petitioners/original plaintiffs have instituted a Suit bearing R.C.S. No. 239 of 1992 for perpetual injunction in respect of the suit property. Pending suit, the petitioners/plaintiffs have filed an application seeking amendment in the plaint and since the said application was allowed by the trial Court, carried out the amendment in the plaint also, but failed to file the amended copy of the plaint before the trial Court. Consequently, the learned Judge of the

trial Court, by order dated 20.07.2007, dismissed the suit. Being aggrieved by the same, the petitioners-plaintiffs preferred Civil M.A.R.J.E. No. 226 of 2007 and the learned 5th Joint Civil Judge Junior Division, Latur, by the impugned dated 04.01.2011, rejected the said application. Aggrieved by the same, the petitioners-plaintiffs preferred M.C.A. No. 16 of 2011 and the learned District Judge-3, Latur, by judgment and order dated 04.10.2016, dismissed the said appeal.

3. The learned counsel for the petitioners-original plaintiffs submits that the trial Court has rejected the application Exhibit 19/Civil M.A.R.J.E. No. 226 of 2007 on the ground that the applicants have not filed affidavit, nor adduced any oral evidence in support of their contention. The learned counsel submits that the trial Court has erroneously given reference to the provisions of Order 39 Rule 11 (Bombay Amendment). In fact, the said reference to Order 39 Rule 11 (Bombay Amendment) is unwanted and uncalled for. Even though, the petitioners carried out amendment in the plaint, the trial Court has dismissed the Suit for non-submission of the amended copy of the plaint. The learned counsel submits that there is no

provision at all in the Civil Procedure Code to dismiss the Suit for non-filing of the amended copy of the plaint. Furthermore, if the amended copy of the plaint is not filed, the trial Court may proceed with the unamended plaint, but the order of dismissing the Suit on this ground alone is improper, incorrect and illegal. The learned counsel submits that even the District Judge, though observed in favour of the petitioners, declined to interfere in the impugned order passed by the trial Court for the reason that no appeal is provided against the order passed by the trial Court in terms of the provisions of Order 43 of the Civil Procedure Code. The learned counsel submits that the petitioners-plaintiffs have instituted the Suit way back in the year 1992 and in this year also the plaintiffs cannot proceed with the Suit due to the order passed by the Courts below.

4. I have heard the learned counsel for respondent no.1.

5. The impugned order dated 04.01.2011 passed by the trial Court below Exhibit 19 Civil M.A.R.J.E. No. 226 of 2007 is liable to be quashed and set aside. The reference to Order 39 Rule 11 (Bombay Amendment) is unwanted and uncalled for. The lower

appellate Court has rightly observed that there is no provision in the Civil Procedure Code to dismiss the suit for want of filing the amended copy of the plaint. Even otherwise, the trial Court could have proceeded with the unamended plaint. However, dismissal of the Suit on this ground is improper and illegal. It is also pertinent that the petitioners-plaintiffs have carried out the amendment well within time. However, the Suit came to be dismissed for want of filing the amended copy of the plaint. The trial Court should have allowed the application under Section 151 of the Civil Procedure Code, however, the trial Court has rejected the application Civil M.A.R.J.E. No. 226 of 2007 by quoting the irrelevant provisions. In view of the above, I proceed to pass the following order:

ORDER

- I. The Writ Petition is hereby allowed. No costs.
- II. The impugned order dated 04.01.2011 passed by the 5th Jt. Civil Judge, Junior Division, Latur in Civil M.A.R.J.E. No.226 of 2007 and the judgment and order passed by District Judge-3, Latur dated 04.10.2016 in M.C.A. No. 16 of 2011 are hereby quashed and set aside.

- III. The application Civil M.A.R.J.E. No. 226 of 2007 is hereby allowed in terms of its prayer clause.
- IV. Considering the old pendency of the Suit, the trial Court is hereby directed to dispose of the Suit expeditiously and preferably within a period of six months from today.
- V. The Writ Petition is accordingly disposed of.

(V. K. JADHAV, J.)

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