

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 11805 OF 2017

SUNDAR GANPATI BHAIRE
VERSUS
SUMANT VASANTRAO DUBE AND OTHERS

...
Advocate for the Petitioner : Shri S.G.Bhalerao h/f Shri Latange V.P.
Advocate for Respondents 1 to 7 : Shri Pawar D.B..
...

CORAM: RAVINDRA V. GHUGE, J.

DATE :- 18th June, 2018

Per Court:

1 The Petitioner/ original Defendant No.1 is aggrieved by the order dated 03.05.2017 passed by the Trial Court in Regular Civil Suit No.164/2013 by which, the application Exhibit-54 filed by the Petitioner/ Defendant No.1 seeking leave to amend the Written Statement, has been rejected.

2 I have considered the submissions of the learned Advocates for the respective sides.

3 The learned Advocate for the Respondents/ original Plaintiffs has strenuously supported the impugned order. The contention is that as the contents of the proposed amendment pertain to the incidents that have occurred before the filing of the Written Statement, inclusion of

those instances or developments by way of an amendment, needs to be prohibited. Proviso below Order 6 Rule 17 of the Code of Civil Procedure has been introduced by way of an amendment to ensure that no litigating side shall delay the proceedings with the aid of an amendment application. So also, it is aimed at prohibiting amendments by which, the applicant can be said to be negligent and not diligent.

4 It requires no debate that an amendment to the Written Statement is to be liberally dealt with in comparison to an amendment sought in the plaint. Unless the amendment is an attempt to introduce such factors which would alter the cause of action or would enable the Defendant to seek certain reliefs which they cannot seek directly, an amendment to the Written Statement can be entertained.

5 The Trial Court has concluded that as the Plaintiffs have adduced evidence and the ground canvassed by the Defendant is that he lost sight of certain aspects which deserve to be brought on record, the application for amendment does not deserve to be entertained.

6 I am unable to agree with the said conclusion for the reason that the suit is of 2013 and Exhibit 54 was filed on 22.08.2016. It cannot be said that the suit is very old. So also, in order to avoid multiplicity of litigation and to ensure that an opportunity to put forth the best case is granted, the amendment could have been allowed as the suit was not very old which would support the rejection of such an application. The Trial

Court could have imposed costs on Defendant No.1 and could have granted an opportunity to the Plaintiffs to contradict the additional factors introduced through the amendment.

7 Considering the above, this Writ Petition is allowed. The impugned order dated 03.05.2017 is quashed and set aside. The application Exhibit 54 is allowed subject to costs of Rs.7000/- (Rupees Seven Thousand only), which the Petitioner/ Defendant No.1 shall deposit in the Trial Court on or before 07.07.2018. After the costs are deposited, each of the Plaintiffs would withdraw the said amount in equal proportion, without conditions.

kps

(RAVINDRA V. GHUGE, J.)