

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

924 WRIT PETITION NO. 11638 OF 2017

NATHASAHEB BABURAO KARALE
VERSUS
KAMAL PANDURANG JADHAV AND OTHERS

...
Advocate for Petitioner : Mr. Gaware Niteen V.
Advocate for Respondents : Mr. Mahesh R. Sonwane
.....

CORAM : V. K. JADHAV, J.
DATED : 10th APRIL, 2018

PER COURT:-

1. By consent of the parties, heard finally at admission stage.
2. The petitioner-original defendant No.6 has filed written statement in the pending suit instituted for declaration, partition, separate possession and decree of perpetual injunction. However, inadvertently there was no compliance of Order VI Rule 15 of C.P.C. i.e. about verification of pleadings and as such, the petitioner has filed an application Exh.125 to cure the said defect. The trial court by impugned order dated 21.10.2016 below Exh.125, rejected the said application. Hence, this writ petition.
3. Learned counsel for the petitioner submits that the issue of non compliance of provisions of Order VI Rule 15 of C.P.C. i.e. verification of pleadings, whether it is curable or non curable defect, is no more res-

integra. Learned counsel submits that there is a gulf of difference between a curable defect and a defect continuing in the verification affidavit without any effort being made to cure the defect. Learned counsel submits that in the instant case admittedly the petitioner has filed an application Exh.125 to cure the defect in the pending suit itself, as such, in the light of ratio laid down by Supreme Court in the case of ***Regu Mahesh @ Regu Maheshwar Rao vs. Rajendra Pratap Bhanj Dev and another, reported in (2004) 1 SCC 46*** and the ratio laid down by this Court in the case of ***Omprakash Dinodia vs. Ashalata wd/o Dr. Anant Kumar Karmarkar and others, reported in 2002 (5) Mh.L.J. 522***, such defect can be cured.

4. Learned counsel for the respondents-original plaintiffs submits that even though the petitioner-original defendant No.6 has filed written statement way back in the year 2010, only after evidence of the plaintiffs was completed, filed an application Exh.125 to cure the defect for want of verification of pleading and thus, the trial court has rightly rejected application Exh.125. No interference is required.

5. In the case of ***Regu Mahesh @ Regu Maheshwar Rao vs. Rajendra Pratap Bhanj Dev and another (supra)***, relied upon by the learned counsel for the petitioner, in para Nos. 11 and 12 of the judgment, the Supreme Court has made the following observations:-

“11. This judgment was followed by a Division Bench of this Court in H.D. Revanna v. G. Puttaswamy Gowda and by a three- Judge Bench in Vijay Laxmi Sadho (Dr.) v. Jagdish.

12. It is, therefore, a settled position in law that defect in verification or an affidavit is curable. But further question is what happens when the defect is not cured. There is gulf of difference between a curable defect and a defect continuing in the verification affidavit without any effort being made to cure the defect.”

6. In the case of ***Omprakash Dinodia vs. Ashalata wd/o Dr. Anant Kumar Karmarkar and others (supra)*** relied upon by learned counsel for the petitioner, in para 5 of the judgment, this Court (Coram: A.M. Khanwilkar, J.) has made the following observations:-

“5. Coming to the first point, undisputedly the plaint was not signed by the Plaintiffs when it was filed on 24.1.1975, but signed only by their Advocate. However, when this plea was raised by the Petitioner for the first time before the Appellate Court, immediately thereafter the Plaintiffs filed application before the Appellate Court; and that Court granted permission to sign the plaint. That said Application was contested by the Petitioner, nevertheless the Appellate Court by its order dated 27th Sept., 1999 allowed the Plaintiffs to sign the plaint. The Appellate Court, therefore, thought it appropriate to permit the Plaintiffs to sign the Plaint. That order, undoubtedly, was not challenged by the Petitioner. However, once again the same plea was raised before the Appellate Court at the time of final hearing of the Appeal. The Appellate Court, in my view, rightly observed that since the order passed on 27th Sept., 1999 was allowed to become final, therefore, the same question cannot be reagitated at the time of

final hearing of the Appeal. No fault can be found with the said reasoning. However, the argument before this Court is that is open to the Petitioner to challenge the order passed on 27th Sept. 1999 in the present writ petition and this Court will have to examine the correctness of the said order. However, on perusal of the relief's claimed in the Writ Petition it would be seen that no relief for setting aside the order dated 27th Sept., 1999 has been specifically prayed. To get over this, the Counsel for the petitioner submits that in ground No. (d) of this petition the Petitioner has raised the point about the said defect in the plaint. In my view, this argument is one of desperation. If the Petitioner was serious enough in challenging the order passed on 27th Sept., 1999, he ought to have done with utmost diligence. It was open to the Petitioner to specifically challenge the said order in this petition, which has not been done. Moreover, on examining the said ground on which the Petitioner relies to contend that he could challenge the said order before this Court, it would be seen that there is no clear challenge to the reasons recorded by the Appellate Court in its order dated 27th Sept., 1999, but vague and general contention has been raised. In my view, the ground as articulated would not be sufficient to question the correctness of the order dated 27th Sept., 1999. The Appellate Court has rightly discussed the ratio of the decisions to observe that provisions of Order 6 Rules 14 and 15 are merely procedural and such defects can be cured even at a latter stage of the proceedings. In this view of the matter, the first contention raised on behalf of the Petitioner, to my mind, is wholly misconceived and the same is, therefore, rejected."

7. In view of the observations made in the above cited cases, it is clear that the provisions of Order VI Rules 14 and 15 are merely procedural and such defect can be cured even at later stage of the proceedings. In the instant case, the petitioner has filed an application

Exh.125 under Order VI Rule 15 of C.P.C. seeking amendment of the plaint merely for the purpose of verification of the pleadings, however, the trial court has turned down the said application on the ground that this defect is not curable. Learned Judge of the trial court has observed that after filing of the pleading, the party cannot verify it. Thus, the order passed by the trial court is not sustainable in the eyes of law. This writ petition deserves to be allowed. Hence, I proceed to pass the following order:-

O R D E R

- I. Writ petition is hereby allowed. No costs.
- II. The impugned order dated 21.10.2016 passed by the learned 5th Joint Civil Judge, Junior Division, Ahmednagar below Exh. 125 in Special Civil Suit No. 90 of 2009 is hereby quashed and set aside.
- III. The application Exh.125 is hereby allowed in terms of its prayer clause.
- IV. Writ petition is accordingly disposed of.

(V. K. JADHAV, J.)

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