

Vidya Amin

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION No. 14232 OF 2017

Nagnath Maruti Jadhav

... Petitioner

Vs.

Sopan Ekanath Ghadge & Anr.

... Respondents

Mr. V.S. Bhate i/b. Kirankumar J. Phakade, Advocate for the petitioner.

Mr. Anvil S. Kalekar, Advocate for respondent nos. 1 and 2.

CORAM: MRS.MRIDULA BHATKAR, J.

DATE: 20th June, 2018.

P.C.:

Rule. Rule made returnable forthwith. By consent, Writ Petition is heard finally and decided at the stage of admission.

2. This Writ Petition is directed against the order dated 5th October, 2017 below Exhibit 41 in Special Civil Suit No. 25 of 2015 passed by the 2nd Joint Civil Judge Senior Division, Solapur rejecting the Application for amendment of the written statement filed under Rule 17 Order 6 of the Code of Civil Procedure. The plaintiffs/respondents have filed the suit for specific performance where they claim that they have paid Rs.30 lakhs to the petitioner/defendant for the suit property. The written statement was filed on 15th June, 2015. The issues were settled and examined the

affidavit-in-chief on 23rd March, 2017. Thereafter, the amendment application was made on 10th April, 2017.

3. The learned counsel for the petitioner/defendant has submitted that the cross-examination of the plaintiffs/respondents is not yet commenced. The petitioner has taken defence that money transaction was by way of loan and there was no intention to sell the property and he has also taken defence in the written statement that the entire amount is repaid. He has also taken defence that the plaintiffs are money lenders. The learned counsel submitted that the facts in whose presence the money was repaid was not mentioned. Similarly, the rate of interest was not mentioned so also the facts in respect of issuance of notice is also not mentioned, so he wants to bring all these facts before the Court in the pleadings. The learned counsel submitted that this amendment is to be allowed in the interest of justice.

4. The learned counsel for the respondents/original plaintiffs supported the order passed by the learned Judge of the trial Court and has submitted that once the evidence has started, the petitioner's application for amendment cannot be allowed. He

submitted that the view taken by the trial Court is correct.

5. The Application for amendment is to be filed at the earliest stage and generally once the evidence is commenced, such application is not to be entertained. However, in this matter, the basic pleading of money lending and repayment of amount is found in the written statement. The names of the witnesses are required to be given at the commencement of the evidence by the defendant. It appears from the proposed amendment that though the foundation is laid by the defendant in respect of his defence and some amendments are there, it is elaborated by written statement by way of amendment. The names of the witnesses are also mentioned. For the decision of the case, sufficient evidence should come before the Court and therefore, as the plaintiffs are not cross-examined, this amendment application can be allowed with cost. The plaintiffs are allowed to file additional affidavit-in-chief pursuant to this amendment. Moreover, additional issue can be framed in view of this amendment. Hence, I pass following order:

- (i) Writ Petition is allowed;
- (ii) The order passed by the learned Judge of the trial Court dated 5th October, 2017 is made absolute in

terms of prayer clause (a);

- (iii) The order is set aside;
- (iv) It is subject to cost of Rs.25,000/- which is to be paid to the respondent/plaintiffs till 30th June, 2018;
- (v) The amendment is to be carried out till 11th July, 2018;
- (vi) The trial Court may frame additional issue, if required;
- (vii) The suit is to be expedited within one year and parties to cooperate.

(MRIDULA BHATKAR, J.)