

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.3058 OF 2016

Anil Vasant Mayekar	.. Petitioner
Vs.	
Praful Balwant Mayekar & Ors.	.. Respondents

Mr.Madhav J. Jamdar for the petitioner.
Mr.S.S. Kulkarni i/by Mr.Swapnil S. Mhatre for the respondent nos.1 to 4.

CORAM : R.D. DHANUKA, J.
DATE : 5th September 2018

P.C.:

1. By this petition filed under Article 227 of the Constitution of India, the petitioner has impugned the order dated 21st October 2015 passed by the learned Civil Judge, Junior Division, Malvan below Exhibit-67 in Regular Civil Suit No.24 of 2013 filed by the petitioner (original plaintiff) thereby rejecting part of the application for carrying out amendment under Order VI Rule 17 of the Code of Civil Procedure, 1908 (for short “the said Code”).

2. The petitioner has filed a suit (Regular Civil Suit No.24 of 2013) for injunction. The respondents (original defendants) filed written statement and a counter claim in the said suit. The counter claim was filed by the respondents inter alia praying for possession of the suit property. In the said counter claim, the petitioner has filed written statement opposing the said counter claim on various grounds.

3. The petitioner thereafter filed an application for seeking amendment to the plaint so as to incorporate the averments in line with

the averments made by the petitioner in the written statement to the counter claim. The claim and counter claim have to be heard together by the learned trial Judge. The learned trial Judge however after considering the averments below exhibit-67 has allowed the amendment except the amendment sought by inserting paragraph 9A to the plaint on the ground that no reasons were given by the petitioner.

4. Mr.Jamdar, learned counsel for the petitioner invited my attention to the original prayer in the plaint, the averments made by the petitioner in the written statement filed by his client to the counter claims filed by the respondents and also the application for carrying out amendment filed by the petitioner under Order VI Rule 17 of the said Code. He submits that except paragraph 9A of the plaint, the remaining amendment was already allowed by the learned trial Judge. He submits that there will be no change in the nature of the suit or cause of action. The additional paragraph sought to be inserted was to make the averments in the plaint in conformity with the statements made by the petitioner in the written statement to the counter claim. There is no amendment to the prayer clauses sought by the petitioner.

5. Mr.Kulkarni, learned counsel appearing for the respondent nos.1 to 4 (original defendants), on the other hand, submits that there would be inconsistency in the original averments made in the plaint and in the amendment as prayed and more particularly paragraph 9A if the petitioner is allowed to carry out amendment as sought by the petitioner and more particularly paragraph 9A.

6. It is not in dispute that the oral evidence has not commenced till date in the matter. It is also not in dispute that in so far as paragraph 9A is concerned, the same is already placed on record in the written statement to the counter claim filed by the respondents. The nature of the prayer in the suit filed by the respondents i.e. for injunction would not change even if the amendment would have been allowed by the learned trial Judge. The suit as well as the counter claim will have to be tried together by the learned trial Judge.

7. In so far as the submission of the learned counsel for the respondent nos.1 to 4 that there would be inconsistency in the original averments made in the plaint and in the amendment as prayed and more particularly paragraph 9A is concerned, in my view, if any such inconsistencies are found, the respondents would be entitled to point out such inconsistencies at the time of cross-examination and also at the time of arguments. The learned trial Judge could not have rejected the said application for amendment in toto including paragraph 9A.

8. The petitioner had rendered sufficient reasons for seeking amendment to the plaint including the amendment of paragraph 9A under Order VI Rule 17 of the said Code. No prejudice would be caused to the respondents if the amendment is allowed in toto.

9. I therefore pass the following order :-

- (i) The impugned order dated 21st October 2015 passed by the learned Civil Judge, Junior Division, Malvan below Exhibit-67 in Regular Civil Suit No.24 of 2013 filed by the petitioner is set aside in so far

as it rejects part of the amendment which is forming part of the application for amendment is concerned.

- (ii) Amendment is allowed in toto. Amendment to be carried out within two weeks from today. Amended copy of the plaint shall be served upon the respondents within one week from the date of carrying out amendment.
- (iii) The respondents (original defendants) is permitted to file additional written statement within four weeks from the date of service of the amended plaint.
- (iv) If issues are already framed by the learned trial Judge, the parties would be at liberty to file additional issues.
- (v) Hearing of the suit is expedited. Both the parties are directed to co-operate with each other and with the learned trial Judge in expeditious disposal of the suit and shall not seek unnecessary amendment.
- (vi) Writ petition is allowed in aforesaid terms. No order as to costs.

R.D. DHANUKA, J.