

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1485 OF 2017

M/s. Sathe & Company Pvt. Ltd.	..	Petitioner
vs.		
M/s. City Corporation Limited	..	Respondent

Mr. S. M. Railkar for Petitioner.
Mr. B. G. Ligade i/b. Mr. D. S. Patil for Respondent.

CORAM : M. S. SONAK, J.
DATE: 26 MARCH 2018

P.C :

- 1] Heard the learned counsel for the parties.
- 2] Rule. With the consent of and at the request of the learned counsel for the parties, Rule is made returnable forthwith.
- 3] The challenge in this petition is to the order dated 16th December 2016, by which the learned trial Judge has rejected the petitioner's (plaintiff's) application for amendment of the plaint.
- 4] Mr. Railkar, the learned counsel for the petitioner submits that this was a case of pre-trial amendment. However, the learned trial Judge, has made applicable the proviso to Order VI Rule 17 of the CPC and on such basis, declined leave to amend. Mr. Railkar submits that the proposed amendment is necessary to clarify and

explain certain matters arising out of the alleged no claim certificate issued by the petitioner – plaintiff. Mr. Railkar submits that the proposed amendment is necessary for determining the real question of controversy between the parties. Mr. Railkar submits that the impugned order is in excess of jurisdiction and the learned trial Judge has failed to apply the correct principles in matters of dealing with applications seeking leave to amend the plaint, particularly when such applications are made before the commencement of the trial.

5] Mr. Ligade, the learned counsel for the respondent (original defendant) submits that there is delay on the part of the petitioner in seeking for leave to amend. He submits that due diligence which is required to be demonstrated by the plaintiff in such matters, has not at all been demonstrated. He submits that the petitioner – plaintiff had himself issued no claim certificate and thereafter, has instituted the suit to recover certain amounts from the respondent. He submits that there is no explanation as to why the averments now sought to be introduced by way of amendment were not set out in the plaint as originally provided. He submits that the petitioner is only seeking to fill in the *lacunae* which arise on the face of the plaint. He submits that there is absolutely no jurisdictional error in the impugned order and therefore, this Court may dismiss this

petition with costs.

6] Rival contentions now fall for determination.

7] There is substance in the contention of Mr. Railkar that the learned trial Judge has applied the proviso to Order VI Rule 17 of the CPC to an application seeking leave to amend the plaint when admittedly, such an application, was made before the commencement of the trial. On this ground itself, the impugned order is required to be set aside. The only two grounds stated in the impugned order are that the application seeking leave to amend was made after some delay and second, that the application, if allowed, will enable the petitioner – plaintiff to fill in the lacunae in the plaint as originally filed. Both these reasons, in the facts and circumstances of the present case, are quite untenable.

8] There is no question of delay as such because Order VI Rule 17 of the CPC itself provides that the courts, may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties. Since, the real controversy between the parties as with regard to

the recovery of certain amounts, obviously the amendment, which is explanatory or clarificatory in nature, is necessary for the purpose of determining real question of controversy between the parties. Assuming that there was some lacunae in the plaint as originally filed, there is nothing in Order VI Rule 17 of the CPC which disables the party from filling in such lacunae. Therefore, even the second reason stated in the impugned order cannot sustain.

9] From the perusal of the roznama, it is seen that the issues were framed on 21st July 2016 and the application for amendment has been filed on 21st November 2016 much prior to the commencement of the trial. In such matters, trial cannot be said to commence merely upon framing of the issues.

10] For the aforesaid reasons, the impugned order is set aside. Leave is granted to amend the plaint in terms of the proposed amendment set out in the application seeking leave to amend. This shall however be subject to payment of costs of Rs.5,000/- by the petitioner to the respondent. Such costs to be paid within a period of four weeks from today. The costs may be either directly paid to the respondent or deposited before the trial court. The trial court to then permit the respondent to withdraw the costs unconditionally.

11] Necessary amendment to be carried out within a period of four weeks from today and copy of the amended plaint be served upon the respondent. The respondent is granted further six weeks time from the date of receipt of the amended copy to file additional written statement in response to the amended plaint.

12] Rule is made absolute in the aforesaid terms.

13] All concerned to act on basis of authenticated copy of this order.

(M. S. SONAK, J.)