

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.2633 OF 2018

Vandana Anand Hule	 Petitioner
V/s.	
Yeshwant Namdeo Kode and Ors.	 Respondents

Mr. B.A. Lawate for the Petitioner.

Mr. Sagar G. Talekar for Respondent No.1.

CORAM : DR. SHALINI PHANSALKAR-JOSHI, J.

DATE : 19TH APRIL, 2018.

P.C. :

1. Heard Mr. Lawate, learned counsel for the Petitioner, and Mr. Talekar, learned counsel for Respondent No.1.

2. By this Writ Petition, filed under Article 227 of the Constitution of India, the Petitioner is challenging the order dated 3rd January 2018, passed by the Civil Judge, Junior Division, Roha, below the application at "Exhibit-114" filed in Regular Civil Suit No.95 of 2012.

3. The application at "Exhibit-114" was filed by the present Petitioner, who is Defendant No.3/(1) before the Trial Court, for amendment in the written statement, under Order 6 Rule 17 of the Code of Civil Procedure, 1908. This application was resisted by Respondent No.1, who is the Original Plaintiff before the Trial Court, on the ground that, by the proposed amendment, the Petitioner is withdrawing the

admissions given in the Suit and also on the count that, the application for amendment of the written statement is filed at the belated stage.

4. After considering the submissions advanced at bar by learned counsel for both the parties, the Trial Court was pleased to hold that, the Petitioner wants to add the facts, which occurred before the institution of the present Suit and hence, as the Petitioner was not diligent, his application cannot be allowed.

5. However, learned counsel for the Petitioner has brought to my notice some part of the amendment application, namely, paragraph Nos.7K, 7L and 7M, which elaborates the facts or instances, which have occurred subsequent to the filling of the Suit and the written statement.

6. In my considered opinion, as regards these subsequent facts, the Trial Court should have allowed the application for amendment. Moreover, the stage of the Suit before the Trial Court is that, the cross-examination of the Respondent-Plaintiff is yet not commenced and, therefore, to this limited extent only, the amendment application needs to be allowed and, accordingly, the interference is warranted in the impugned order passed by the Trial Court. Hence, the order.

“O R D E R”

- (i) The Writ Petition is allowed. The impugned order passed by the Trial Court, rejecting the

application of the Petitioner, who is Defendant No.3/(1) before the Trial Court, for amendment in toto, stands set aside.

- (ii) The application for amendment filed by the Petitioner before the Trial Court is partly allowed and the Petitioner is permitted to carry out amendment to incorporate only paragraph Nos.7K, 7L and 7M of the amendment application, which pertain to subsequent facts.
- (iii) Petitioner to carry out amendment within a period of two weeks from today. In case of failure on the part of the Petitioner to do so, the application at “Exhibit-114” will stand automatically rejected and the present order passed by this Court will also stand vacated.
- (iv) Parties to act on the authenticated copy of this order.

[DR. SHALINI PHANSALKAR-JOSHI, J.]