

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.2287 OF 2018

Arvind Jeram Kotecha	 Petitioner
V/s.	
Prabhudas Damodar Kotecha	 Respondent

Ms. Saumya Shrikrishna, i/by Mr. Sanket Mungale, for the Petitioner.

Mr. P.S. Dani, Senior Counsel, with Mr. Farhaan Dubash, Mr. Rachit Thakar and Mr. Kshitij Kadam, i/by M/s. Rustomji and Ginwala, for the Respondent.

CORAM : DR. SHALINI PHANSALKAR-JOSHI, J.

DATE : 21ST MARCH, 2018.

P.C. :

1. Heard Ms. Shrikrishna, learned counsel for the Petitioner, and Mr. Dani, learned Senior Counsel for the Respondent.

2. By this Writ Petition, filed under Article 227 of the Constitution of India, the Petitioner is challenging the order dated 23rd January 2018 passed in the Chamber Summons in S.C. Suit No.8235 of 1994 by the learned Judge of the City Civil Court, Greater Bombay.

3. The said Chamber Summons was taken out by the present Petitioner for expunging/ignoring or discarding certain portion of the affidavit-in-examination-in-chief of the Respondent-Plaintiff. The Trial

Court has allowed the said Chamber Summons partly and thereby deleted or ignored paragraph No.20 of the affidavit-in-examination-in-chief of the Respondent in respect of 'Deed of Rectification of Partnership Deed' dated 26th July 1965.

4. The main contention of learned counsel for the Petitioner is that, the Respondent herein has earlier filed two Chamber Summonses, bearing Nos.414 of 1998 and 953 of 2015, seeking amendment in the original plaint and both the Chamber Summonses were dismissed by the Trial Court. The order passed in the first Chamber Summons was also confirmed by the Appellate Court; whereas, the order passed in the second Chamber Summons was not at all challenged. It is the contention of the Petitioner that, whatever amendment was proposed in the plaint earlier, which was rejected by both the Courts below, is now sought to be brought on record through the affidavit-in-examination-in-chief filed by the Respondent. The Petitioner has given the affidavit in support of the Chamber Summons, stating as to which documents now the Respondent is trying to introduce in evidence, which were not stated in the plaint and which were cited in the second Chamber Summons seeking the amendment in the plaint. It is urged that, as the second Chamber Summons seeking the proposed amendment is dismissed, now those documents cannot be brought on record.

5. However, perusal of the impugned order passed by the Trial Court in the Chamber Summons goes to show that, it was observed therein also that, these facts were pleaded in the plaint and only by way of clarification, the Respondent-Plaintiff wanted to bring on record those facts. Therefore, whatever facts were pleaded already and in support of those facts, if the Respondent wants to produce certain documents or to clarify certain facts in his evidence, then, it cannot be said that those averments or recitals in the affidavit are irrelevant or required to be expunged.

6. As regards paragraph No.20 of the affidavit-in-examination-in-chief, the Trial Court has rightly held that by this paragraph, the Respondent was introducing the facts, which were not allowed to be brought on record by earlier amendment. In this paragraph, Respondent has stated that he came across a 'Deed of Certification' dated 26th July 1965, of which he was not aware about, and he has accepted the said 'Deed of Certification' as being valid. Now, the case of the Respondent is that, by Clause-2 of the said 'Deed of Certification' , the 'Partnership Deed' was amended and the Partnership Firm, is still in existence. However, in the plaint, Respondent has claimed that the 'Partnership Deed' has come to an end and, therefore, the amendment, sought in the plaint by the Respondent in the first Chamber Summons to that effect has been dismissed. Hence, the Trial Court has rightly thought it fit to

ignore paragraph No.20 of the affidavit-in-examination-in-chief in respect of the 'Deed of Rectification of Partnership Deed' dated 26th July 1965.

7. However, as regards the remaining paragraphs in the affidavit-in-examination-in-chief, I do not find that by those paragraphs, the Respondent is introducing something new, which is not pleaded in the plaint. Conversely, by those paragraphs, he is producing and proving the documents, on which he is relying in the plaint, and, therefore, he cannot be precluded from doing so.

8. As regards paragraph Nos.19, 22 and 25 of the affidavit-in-examination-in-chief, which, according to the Petitioner, are also not quoted in the plaint, one cannot say that those paragraphs are in respect of the amendment, which was rejected, or these paragraphs are totally irrelevant, so as to strike them off.

9. Conversely, as held in the case of *Banganga Co-operative Housing Society Ltd. and Ors. Vs. Vasanti Gajanan Nerurkar and Ors.*, MANU/MH/1020/2015, if the evidence of Plaintiff does not appear to be irrelevant or hear-say in the nature of legal submissions, arguments in the form of prayers or reliefs should be allowed. Even if there is a slightest doubt, then the evidence needs to be retained and should not be deleted or struck-off.

10. Therefore, when the Trial Court has considered the averments made in the pleadings and the averments and the recitals made in the affidavit-in-examination-in-chief and also considered the portions, which were pleaded in the Chamber Summonses for proposed amendment but not allowed and passed the appropriate order, no interference is warranted therein.

11. The Writ Petition, therefore, being without merits, stands dismissed.

[DR. SHALINI PHANSALKAR-JOSHI, J.]