

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.4139 OF 2017

Sunil Gunjeshwari Singh	 Petitioner
V/s.	
The State of Maharashtra & Ors.	 Respondents

ALONG WITH

WRIT PETITION NO.4141 OF 2017

Kiran Sarjerao Bhosale	 Petitioner
V/s.	
The State of Maharashtra & Ors.	 Respondents

Mr. Saurabh S. Kurade for the Petitioners.

Mr. A.R. Metkari, A.G.P., for Respondent No.1-State.

Mr. Sampatrao Pawar for Respondent No.2.

CORAM : DR. SHALINI PHANSALKAR-JOSHI, J.

DATE : 14TH MARCH 2018.

P.C. :

1. Heard Mr. Kurade, learned counsel for the Petitioners, Mr. Metkari, learned A.G.P. for Respondent No.1-State, and Mr. Pawar, learned counsel for Respondent No.2.

2. By these Writ Petitions, filed under Article 227 of the Constitution of India, the Petitioners are challenging the orders dated 29th November 2016 passed by the Member, Maharashtra State Co-operative Appellate Court, Mumbai, thereby dismissing the Appeal from Order Nos.89 of 2016 and 88 of 2016, respectively, which were preferred by the present

Petitioners against the orders passed by the Co-operative Court No.1, Mumbai dated 25th August 2016, rejecting their applications for amendment in the written statement, as sought by the present Petitioners.

3. As per the case of the Petitioners, they are seeking amendment in the written statement in respect of the subsequent events. However, as rightly observed by the Co-operative Court and the Appellate Court, the events, in respect of which the amendment is sought, are of the years 2011, 2012 and 2013. Petitioners have filed first written statement in the year 2012 and thereafter, additional written statement in the year 2014. Therefore, when they had filed the additional written statement, they were very much aware about these subsequent events, but, despite that, they had not sought amendment at an earlier stage.

4. Moreover, the proposed amendment is sought after the recording of evidence is started and, therefore, an embargo laid down under the Proviso to Order 6 Rule 17 of the Code of Civil Procedure, 1908, definitely comes into play. In order to cross that embargo, the Petitioners should have shown or, at-least, averred in the application as to how, despite due diligence, they could not bring these facts to the notice of the Court at an earlier stage. Petitioners' applications, however, are conspicuously silent about the exercise of due diligence and though they contend amendment in respect of those subsequent events,

admittedly, those events had taken place much prior to their filing of additional written statements in the year 2014.

5. Both the Courts below have also noticed that, the proposed amendment is not at all necessary, in the sense that, on the one hand, the Petitioners had admitted the disbursement of loan and repayment of part of the loan, and, on the other hand, by the proposed amendment, they are raising objection to the policy adopted by the Respondent No.2-Bank while sanctioning and disbursing the loan. In such situation, the proposed amendment is also not directly relating to the sanction of the loan and its recovery. In that way, it is also not necessary to decide the real controversy between the parties.

6. As both the Courts below, after considering the entire facts and material before it, have arrived at their own finding of fact, this Court should be slow in interfering in the exercise of the said discretion in its writ jurisdiction, unless the perversity is shown therein. However, perusal of the orders passed by the Co-operative Court and the Appellate Court does not reveal any such perversity, so as to warrant interference therein.

7. Both the Writ Petitions, therefore, stand dismissed.

[DR. SHALINI PHANSALKAR-JOSHI, J.]