IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 3262 OF 2018

Madhukar Shankar Jadhav .. Petitioner

vs.

Ranappa Chandsha Kanman .. Respondent

Mr. Vilas S. Gharat, Advocate for Petitioner.
None for Respondent.

CORAM : M. S. SONAK, J.
DATE: 27 MARCH 2018

P.C :

1] Heard learned Advocate Mr. Gharat for Petitioner.

2] The challenge in this Petition is to the impugned order dated 01.09.2015 by which the Learned Trial Judge has permitted the Respondent (Defendant) to amend the written statement. Mr. Gharat, learned counsel for the petitioner submits that the application seeking leave to amend was filed after great delay. He submits that the Respondent seeks to raise inconsistent pleas, which is impermissible. He points out that earlier suit instituted by the respondent has already been dismissed and as such dismissal has attained finality. For these reasons, he submits that the impugned order granting leave to the respondent to amend the written statement is in excess of jurisdiction and, therefore, ought to be interfered with.

3] Upon taking into consideration all the contentions of Mr. Gharat and upon perusing the record as well as the impugned order, there is no case made out to interfere with the impugned order.

4] In the first place, leave to amend was applied prior to commencement of the trial in the present suit. Normally, pre-trial amendments and that too to the written statement have to be considered liberally. Secondly, there is no bar for raising inconsistent pleas in the written statement. At the highest, the defendant, will have to make an application at the stage of leading of evidence. Thirdly, in the impugned order, it is stated that the plea now sought to be raised has some foundation in the written statement earlier filed.

5] The Trial Court has observed that it cannot be said that proposed amendment is absolutely new or it will change the nature of the suit.

6] For all the aforesaid reasons, case is not made out to interfere with the impugned order in the extra ordinary jurisdiction under Article 227 of the Constitution of India.

7] Writ Petition is dismissed.

8] There shall be no order as to costs.

(M. S. SONAK, J.)

Tendulkar