

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 2914 OF 2018

Niyojit Shri Vinobha Bhawe Smruti
Sahakari Grahanirman Sanstha, Solapur ... Petitioner
V/s.
Rukminibai Nagnath Shahapurkar
(Since decd.) Through LRs. & Ors. ... Respondents

- Mr.Vishwajeet Sawant a/w. Mr.Shrishail Sakhare for the Petitioner.
- Mr.Surel S. Shah for Respondent Nos.1A, 2B to 2E, 3 and 4.
- Mr.A.A. Alaspurkar, A.G.P. for Respondent Nos.5 and 6.

CORAM : DR.SHALINI PHANSALKAR-JOSHI, J.

DATE : 3rd APRIL, 2018.

P.C. :

- 1] Heard learned counsel for the parties.
- 2] By this Writ Petition, filed under Article 227 of the Constitution of India, the Petitioner is challenging the order dated 7th February 2018 passed by the Adhoc District Judge-3, Solapur, below the application at Exhibit-103 in Regular Civil Appeal No.279 of 2013.
- 3] The application at Exhibit-103 was filed by the present Petitioner, who is the original Plaintiff in the trial Court and the

Appellant in the First Appeal Court. The said application was for amendment of the plaint under Order-6 Rule-17 of the Code of Civil Procedure (*for short, "C.P.C."*) in order to give better particulars of the facts, which according to the Appellant are already pleaded.

4] This application was resisted by the Respondents, herein, firstly on the count that, it is filed at very belated stage, and, secondly on the count that, it is changing the nature of the suit.

5] The Appellate Court has rejected the said application, mainly on the count that such relief could have been asked at the earlier stage but not sought and this amendment application being filed in the course of appeal, without giving any adequate explanation as to why it was not filed earlier.

6] Perusal of the order passed by the Appellate Court and even the application which was filed by the Petitioner before the Appellate Court clearly goes to show that, absolutely no explanation is offered by the Petitioner as to why such application for amendment was not filed earlier. Merely saying that "inadvertently these particulars remained to be pleaded" cannot be a ground to consider the application for amendment of the plaint, that too at the appellate stage. The proviso to Order 6 Rule 17 of C.P.C. clearly specifies that,

once the trial has commenced, then no such application for amendment of pleading can be allowed, unless the Court comes to the conclusion that despite due diligence, the party could not have brought these facts to the notice of the Court at earlier stage.

7] In the present case, it is pertinent to note that, these facts were very much within the knowledge of the Petitioner and specific objection was raised by the Respondent in their written statement. The cross examination of the Respondent and his witnesses was also conducted on these aspects. Despite that, the amendment application was not filed earlier during the *pendency* of the suit or immediately even after the decision of the suit, though in the judgment of the trial Court itself it was pointed out that these material particulars were not appearing, hence the evidence without the pleadings cannot be considered. But the Petitioner has not filed such application for amendment till the year 2017 when the appeal was 'part-heard'. In such situation, no fault cannot be found in the impugned order passed by the Appellate Court.

8] If the Petitioner has blissfully remained negligent in prosecuting his remedies, then the Court is not expected to allow such application at any stage of the proceedings and especially at such a belated stage. Moreover, there is no question of any prejudice being

caused to the Petitioner, if according to him, all the necessary facts are already pleaded. Hence on that count also the amendment application cannot be allowed; especially when it calls for recording of further evidence. Even if, the Petitioner does not want to lead further evidence, the learned counsel for the Respondent submits that, it would be necessary for the Respondent to lead further evidence in the light of these material particulars which the Petitioner wants to bring on record by way of amendment. Therefore, at the appellate stage itself, the suit would be reopened; especially after the trial Court has recorded its own findings on the basis of the absence of these pleadings and hence, definitely prejudice is going to be caused to the Respondent, if the amendment application is allowed at this stage.

9] As regards the judgments of the Hon'ble Apex Court relied upon by the learned counsel for the Petitioner that of *Surender Kumar Sharma V/s. Makhan Singh*¹, *Chakreshwari Construction Pvt. Ltd. V/s. Manohar Lal*², *Pankaja & Anr. V/s. Yellappa*³ and of this Court in the case of *Mahendrakumar Bhagwatiprasad Agrawal V/s. Virendra Bhagwatiprasad Agrawal*⁴, there cannot be any dispute that the amendment can be allowed at any stage, but the caveat is that such

1 AIR 2009 SC (Supp) 2671

2 2017(5) Mh.L.J.

3 AIR 2004 SCC 4102

4 2015(1) Mh.L.J.

amendment should not cause any prejudice to the party.

10] Here, in the case, allowing such amendment application which is filed at the stage of final argument of the appeal, even though the appeal is pending since the year 2013 and which amendment requires the evidence to be recorded, is definitely going to cause prejudice to the Respondent.

11] Hence, though delay may not by itself be the ground, as the delay is resulting in causing prejudice to the Respondent in view of its consequence of reopening of the case, the Appellate Court has rightly exercised its discretion in rejecting the said application. In writ jurisdiction no interference is warranted in the said order. Therefore, Writ Petition stands dismissed.

[DR.SHALINI PHANSALKAR-JOSHI, J.]