

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

WRIT PETITION NO. 4486 OF 2017

	Hanumant Gangaram Khamkar,	]	
	Since deceased through his heirs	]	
	& legal representatives,	]	
1A	Smt. Yamuna Yashwant Khamkar	]	
	Aged about 59 years,	]	
	Occupation : Household,	]	
1B	Vasant Hanumant Khamkar	]	
	Aged about 59 years,	]	
	Occupation : Agriculturist	]	
	Both R/o. Vadgaon (Potnisanche)	]	
	Tal. Khandala, District Satara.	]	<u>...Petitioners</u>

Versus

1	Satish Parbati Gaikwad,	]	
	Aged about 54 years,	]	
	Occupation : Service & Agriculture,	]	
	R/o.Vadgaon (Potnisanche),	]	
	Tal. Khandala, District Satara.	]	
2	Sou.Kamal Eknath Bhargude,	]	
	Aged about 60 years,	]	
	Occupation : Household,	]	
	R/o. At-Post Palshi,	]	
	Tal. Khandala, District Satara.	]	
3	Sou.Shobha Atmaram Jadhav,	]	
	Aged about 52 years,	]	
	Occupation : Household,	]	
	R/o. Khanapur, Tal. Wai,	]	
	District Satara.	]	
4	Sou.Sharda Bhanudas Kadam,	]	
	Aged about 47 years,	]	
	Occupation : Household,	]	
	R/o.Kejal, Tal. Wai, District Satara.	]	<u>...Respondents.</u>

- Mr.Dilip Bodake for the Petitioners.
- Mr.Vaibhav R. Gaikwad a/w. Mr.Ramanik Pawan for Respondent No.1.

CORAM : DR.SHALINI PHANSALKAR-JOSHI, J.

DATE : 24th JANUARY, 2018.

ORAL JUDGMENT :

1] Rule. Rule made returnable forthwith. Heard finally with consent of learned counsel for the Petitioners and Respondent No.1.

2] By this Writ Petition filed under Article 227 of the Constitution of India, the Petitioners are challenging the order dated 10th March 2017, passed by the Court of Civil Judge Junior Division, Khandala, District Satara, below Exhibit-“247” in Regular Civil Suit No.87 of 1995.

3] The application at Exhibit-247 was filed by Respondent No.1-Plaintiff under Order-18 Rule-4 of Code of Civil Procedure (for short, “C.P.C.”) for leading additional evidence in order to bring on record the document pertaining to the compromise arrived at between the parties, out of the Court, on 26th August 2012. It was submitted that Respondent No.1 has received the said document after his evidence and cross-examination was over. The trial Court has also

allowed the production of the said document on 10th March 2016 and therefore, in order to prove the said document, Respondent No.1 may be permitted to lead additional evidence under Order-18 Rule-4 of C.P.C..

4] The said application was strongly resisted by the Petitioners by submitting that the application is filed at a belated stage, after the final arguments in the suit were heard and the matter was fixed for the purpose of only the filing of Citation/Case Laws.

5] Further, it was submitted that the application filed by the Respondent No.1 at Exhibit-242 seeking amendment in the plaint in order to bring on record the subsequent event of alleged compromise was also rejected by the trial Court on 16th January 2017. The said order is not challenged by Respondent No.1. On this ground also, this application to lead additional evidence about the document in respect of recording the compromise, in the absence of pleadings, cannot be tenable and it should not be granted.

6] The trial Court, however, vide an one line order of, *“Read Application and say of other side. In the interest of justice, this application is allowed”*, allowed the said application, without giving any reasons. Hence, being aggrieved thereby, the instant Writ Petition

is preferred.

7] In view of the one-line order passed by the trial Court, without giving any reasons for allowing the application, the first and foremost submission of the learned counsel for the Petitioners is that, the impugned order of the trial Court is clearly not tenable as it is without any reasons and hence without application of mind and on this ground itself, it is liable to be quashed and set-aside. It is submitted that on this ground the matter needs to be remanded to the trial Court for deciding the application afresh.

8] It is true that the “reasons” are the soul of any judicial order, as they enable the parties to know why a particular order was passed in their favour or against them. The recording of “reasons” in the order also assists the higher Courts in deciding the legality and validity of such order. Hence, the order without “reasons” is no order in the eyes of the law. Therefore, there may be some substance in the submission of learned counsel for Respondent No.1 that, if the order is without reasons, then this Court should remand the matter to the trial Court for considering the application at Exhibit-247 afresh, by giving the reasons. In the normal course, this Court would have allowed the said request of remanding the matter, but in the facts of the present

Writ Petition, this Court finds it difficult to accept the said request or to adopt the normal course of remand of the matter.

9] It is pertinent to note that in this case, the suit is filed by Respondent No.1 in the year 1995. The suit is simpliciter for injunction. In that suit, the present Petitioners have filed the counter claim for possession and the proceedings of the suit are dragged from time to time for a period of more than a decade and ultimately in the year 2012, the evidence of Respondent No.1-Plaintiff came to be recorded and it was completed on 27th February 2012. Thereafter, the cross-examination of the witnesses of Respondent No.1-Plaintiff was also concluded. Then even the evidence of the Petitioners-Defendants was also recorded. This process of “hearing” of the suit and recording of evidence took place for not less than five years. Then, the final arguments were heard and as can be seen from the order passed by the trial Court below Exhibit-242 on 16th January 2017, the matter was kept for “filing of the Citations/Case Laws”.

10] At this stage, the Respondents herein have filed the application at Exhibit-242 for carrying out amendment in the plaint in order to bring on record the additional fact that after the recording of his evidence, the compromise was arrived at on 26th August 2012 and

he wants to bring those facts before the Court by way of amendment in the plaint. The trial Court has, vide its order dated 16th January 2017, considered in detail the fact that on 10th February 2014 itself the arguments were over and the matter was kept for filing Case Laws/Citations. Thereafter, this application was filed. It was considered that suit is of more than 20 years old. Moreover, the application was filed without showing exercise of any due diligence and in such situation, the application for amendment in the plaint was not tenable. Therefore, the said application came to be rejected on 16th January 2017. Admittedly, that order is not challenged by Respondent No.1 before the higher forum. As a result, it has become final. Therefore, now merely because the production of the additional document is allowed, whether the Respondent No.1 can be permitted to lead additional evidence on the basis thereof, in the absence of any pleadings to that effect? The answer has to be in the negative.

11] In this respect, learned counsel for the Petitioners has also placed reliance on the judgment of the Apex Court in the case of *Executive Officer, Arulmigu Chokkanatha Swamy Oil Trust, Virudhunagar vs. Chandran & Ors.*, 2017 (4) Mh.L.J. 809, wherein identical facts of the case, it was held that, *when the Plaintiffs application made for amendment of the plaint was considered and*

rejected by the Court, the Application for leading evidence with regard to which there is no pleading, cannot be allowed and hence, has been rightly discarded by the trial Court. It was further held that, "unless there is a pleading especially with regard to the source of title, the defendant of a suit has no opportunity to rebut such pleading. Thus the evidence with regard to which there is no pleading cannot be relied upon by the Plaintiff for setting up his title."

12] In the instant case, as admittedly, the application seeking amendment in the plaint for bringing on record the fact of compromise is rejected and that order has become final, no permission can be granted for leading of additional evidence in respect of additional document recording alleged compromise, as such evidence would be without any foundation in the pleading.

13] A useful reference in this respect can also be made to the judgment of this Court in the case of *Dileep Nevatia vs. State Bank of India, 2015 (4) of All MR 231*, wherein also in the identical facts, it was held that, if the application is filed for leading of additional evidence at the stage of final argument and if no sufficient ground is made out for reopening of evidence and application is not even mentioning as to how the evidence sought to be adduced, would

advance the Plaintiff's case, such application needs to be dismissed.

14] Here in the case as stated above, admittedly, not only the recording of entire evidence is also over but even the arguments are over and at this stage allowing reopening of evidence by granting permission to lead additional evidence, in respect of a fact which is not having foundation in the plaint and the permission to plead that fact is also not granted and that order has become final, the trial Court has committed a grave error in allowing such application, that too without assigning any reasons for the same.

15] Learned counsel for Respondent No.1 has, however, relied upon the judgment of this Court in the case of *Rajesh Varma vs. Aminex Holdings & Investments & Ors.*, 2008(3) Mh.L.J. 460, in which in the facts of that particular case it was held that, “*the Plaintiff having filed affidavit in lieu of examination-in-chief is not precluded from recording further examination-in-chief*”. There cannot be any dispute about this legal proposition but the only question is at which stage, such permission is sought? Especially in the facts of the present case, there is absolutely no pleading on record about the compromise and also having regard to the fact that the final arguments in the matter are also over, the law does not permit such

exercise of leading additional evidence.

16] Learned counsel for Respondent No.1 has then relied upon the judgment of this Court in the case of *Jagdale Mirch Masale Products (India) vs. Kamal Foods, 2010 (4) Mh.L.J. 619*, wherein this Court has considered the provisions of Section 311 of Criminal Procedure Code. Now, admittedly, the said provisions pertain to the Criminal matters, whereas in the present case, this Court is considering the production of additional evidence in the Civil suit and in the backdrop of the facts which are stated above. Hence this judgment cannot be of assistance.

17] It is pertinent to note that in this case even though the evidence of the Petitioners/Defendants was recorded subsequent to the alleged compromise dated 26th August 2012, not a single suggestion, even for the sake of it, was given to him, about the compromise and his accepting of such amount under compromise.

18] It is also worth to note that the document recording alleged compromise does not and cannot in any way take forward the case of Respondent No.1 as the said document is executed on Stamp Paper of Rs.10/- and it contains nothing more but for admitting the receipt of the amount. It does not disclose anything in respect of the compromise

of the suit or for which purpose said amount was received. The suit filed by Respondent No.1 is also simpliciter for injunction. In such situation, the alleged evidence of compromise, in my considered opinion, even if, allowed to be brought on record, is not going to help the case of Respondent No.1.

19] Conversely, it is going to cause a grave prejudice to the Petitioners as it will unnecessarily protract and prolong the hearing of the suit before the trial Court which has already crossed the age of 22 years. The suit is of the year 1995 and kept only for the filing of the Case Laws/Citations and at this stage, taking it back to the original stage and that too, in the absence of pleadings, which are of vital significance by granting permission to lead additional evidence is going to be sheer abuse of process of law. Therefore, the impugned order passed by the trial Court cannot survive and hence, stands set-aside. The Writ Petition is accordingly allowed.

20] Rule made absolute in above terms.

21] It is expected that the trial Court should decide the suit as expeditiously as possible, as it is already at the stage of conclusion, final arguments being heard.

22] It is made clear that the above-said observations are made only for the purpose of deciding this Writ Petition and the trial Court is not to be influenced by the same.

[DR.SHALINI PHANSALKAR-JOSHI, J.]