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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

REVIEW PETITION NO. 42 OF 2018
IN
WRIT PETITION (ST) NO.2597 OF 2017

Shyam Chandulal Agrawal ... Petitioner
V/s.
Balkrushna Trambak Wani (decd)
through his LRs ... Respondents

Mr. Anil Kumar Patil a/w Akshay M. Gosavi i/by GMS Legal, for the Petitioner.
Mr. Vivek V. Salunke, for the Respondents.

CORAM : DR.SHALINI PHANSALKAR-JOSHI, J.

DATE : 10TH APRIL, 2018.

P.C. :

1] Heard learned counsel for the petitioner and learned counsel for the respondents.

2] This Petition is filed, seeking review of the order dated 9.3.2018, passed by this Court in Writ Petition No.2597 of 2017.

3] The said writ petition was filed challenging the order dated 4th January, 2017, passed by the Jt. Civil Judge Senior division, Malegaon below Exh. 162 in Special Civil Suit No.42 of 2011

4] Application at Exh.162 was filed in the trial Court by the present petitioner for recalling of the respondent-plaintiff, for cross

examination.

5] The submission of learned counsel for the petitioner is that the trial Court has proceeded to reject the said application on the misconceived understanding that it was filed under Order 18 Rule 17 of Code of Civil Procedure. However, the said application was filed in order to avail an opportunity of cross examination by the present petitioner, who was joined as defendant No.35, subsequently after the evidence of respondent plaintiff was over before the trial Court. It is submitted that the evidence of respondent plaintiff was completed on 21.9.2016; whereas present petitioner's application for impleading him as defendant No.35 was filed on 26.10.2016 and it was allowed on 4.1.2017. Thus, it is submitted that when the petitioner was joined in the suit, subsequent to the evidence of respondent-plaintiff was over, there was no question of invoking the provision of Order 18 Rule 17 C.P.C. However, as the trial Court has rejected the petitioner's application, considering it as an application under Order 18 Rule 17 of C.P.C. The approach of the trial Court was not correct and this Court has also, considering the impugned order of the trial Court, proceeded on the same footing that application is under Order 18 Rule 17 C.P.C. and therefore, review of the order passed by this Court, has become necessary

6] In support of his submission, learned counsel for the

petitioner has relied upon the roznama of the trial Court to support his contention that the petitioner was added as defendant No.35 in the suit subsequent to the evidence of respondent plaintiff was recorded.

7] However, as rightly pointed out by learned counsel for respondent, there was absolutely; no question of trial Court proceeding on misunderstanding because the impugned order passed by the trial Court, clearly goes to show that in paragraph No.3, the trial Court has observed that it's attention was invited by learned counsel for the petitioner to the Provision of Order 18 Rule 17 C.P.C., read with section 151 of CP.C. Not only that, reliance was also placed by him on the judgment of Apex Court in the case of K.K.Veluswamy -vs- Palanisamy [2011 DGLS (SC) 277], which also deals with the provisions of Order 18 Rule 17 C.P.C.

8] Thus, the entire order which was passed by the trial Court, proceeded on the basis of Order 18 Rule 17 C.P.C. It is pertinent to note that in the application filed by the petitioner before the trial Court, permission was sought to recall respondent-plaintiff. It was not at all brought to the notice of the trial Court that the petitioner was added subsequent to the completion of the evidence of respondent-plaintiff. Conversely, it was stated that the advocate of the petitioner was busy in prosecuting Election Appeal and therefore,

the order of "No cross" was passed and evidence was closed against the petitioner and hence it was stated that in order to get an opportunity to rebut the evidence of plaintiff, plaintiff may be recalled for cross examination. Therefore, the application itself is silent as to the material fact about the petitioner being added or impleaded in the suit subsequently. However, it was stated that when the respondent was under cross examination, petitioner's advocate was busy in another Court. In such situation, the petitioner now, cannot contend that his application was wrongly considered by the trial Court, as an application under Order 18 Rule 17 C.P.C.

9] Learned counsel for respondent, in this respect also pointed out to the grounds which which were pleaded by the petitioner in support of the writ petition especially ground No.(g), which reads thus :-

> "g. That the Ld. Lower Court did not fathom in the correct perspective the judgment delivered in KK Veluswamy -vs- N. Palaniswamy of the Hon'ble Supreme Court of India".

10] Here in Writ Petition also, the order of the trial Court, was challenged on the ground that the trial Court has not properly appreciated the Provision of Rule 17 of Order 18 of C.P.C and also the judgment of the Hon'ble Supreme Court, in the case of "*Veluswamy*

-vs- N. Palaniswamy (supra). Hence it cannot be said that either the trial Court or this Court has committed any error apparent on the face of record so that this Court should review it's own order, especially when the petitioner has not brought to the notice of trial Court or to this Court that he was added or impleaded subsequently after the evidence of respondent-plaintiff was over.

11] Now, the petitioner cannot contend that there is error apparent on the face of record and therefore, this Court should review its own order.

12] In view thereof, Review Petition holds no merit and hence it needs to be dismissed.

13] At this stage, learned counsel for the petitioner submits that the petitioner may be given liberty to file fresh applicatin before the trial Court for permitting him to conduct cross examination of respondent-plaintiff.

14] Learned counsel for the respondent, however, points out that after the writ petition was dismissed by this Court, evidence of the petitioner is recorded by the trial Court, even final argument of learned counsel for respondent-plaintiff is heard and now matter is kept before trial Court for hearing of argument on behalf of petitioner.

15] In such situation, in my considered opinion, again it would

not be appropriate to reopen the entire process by allowing the petitioner to file fresh application for conducting cross examination of the respondent-plaintiff. Hence this prayer also stands rejected.

[DR.SHALINI PHANSALKAR-JOSHI, J.]