

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.2629 OF 2017

Bhaverlal Dhanraj Sanghvi,]
Adult, Occupation : Business,]
R/at 321/4, Shanti Nagar Society,]
Mahatma Phule Peth, Pune-411042.] Petitioner

Versus

1. Jayprakash Gobindram Hassija,]
Adult, Occupation : Business,]
R/at Flat No.9, Building "E",]
Maurya Co-operative Society,]
2, Naylor Road, Pune-411001.]
2. Suresh D. Sanghvi,]
Adult, Occupation : Business,]
R/at 321/7, Shanti Nagar Society,]
Mahatma Phule Peth, Pune-411042.] Respondents

Mr. Saurabh M. Raikar for the Petitioner.

Mr. Abhishek Kulkarni for Respondent No.1.

CORAM : DR. SHALINI PHANSALKAR-JOSHI, J.

DATE : 5TH MARCH 2018.

ORAL JUDGMENT :

1. Rule. Rule is made returnable forthwith. Heard finally, at the stage of admission itself, by consent of Mr. Raikar, learned counsel for the Petitioner, and Mr. Kulkarni, learned counsel for Respondent No.1.

2. By this Writ Petition, filed under Article 227 of the Constitution of India, the Petitioner is challenging the order dated 25th January 2016 passed by the 9th Joint Civil Judge, Senior Division, Pune, below “Exhibit-80” in Special Civil Suit No.920 of 2006.

3. The application at “Exhibit-80” was filed by the present Petitioner before the Trial Court for correcting the typographical error. It is submitted that, in the application at “Exhibit-74”, filed by the Petitioner for amendment of the suit claim, due to oversight, 'paragraph No.14' was mentioned instead of “paragraph No.20” and, therefore, it is necessary to carry out the relevant amendment.

4. This application was resisted by Respondent No.1 herein, raising the contention, *inter alia*, that, he has already filed application at “Exhibit-63”, under Order 7 Rule 11 of the Civil Procedure Code, 1908, for rejection of the plaint on the ground that, the necessary amendment was not carried out and as a result, the valuation of the suit claim was not proper.

5. The Trial Court, accordingly, rejected the said application filed by the Petitioner, holding that, the amendment sought goes to the root of the dispute, which is contested by Respondent No.1 in the light of his application below “Exhibit-63”.

6. While challenging this order of the Trial Court, the submission of learned counsel for the Petitioner is that, the amendment sought was merely of a formal nature, as wrong number of the paragraph was mentioned and which he wanted to correct. Hence, the Trial Court should not have adopted such a hyper technical attitude.

7. Per contra, learned counsel for Respondent No.1 submits that, when the application for amendment of the suit claim was filed by the Petitioner, Respondent No.1 has given his 'no objection' to allow such amendment and it was also brought to the notice of the Petitioner that wrong paragraph number is mentioned and proper paragraph number is "20".

8. Despite that, Petitioner has not corrected the same, though the order of allowing such application for amendment was passed on 11th September 2015. Petitioner has not carried out such amendment within fourteen days, as mandated under Order 6 Rule 18 of CPC. The present application was filed on 28th September 2015. Meanwhile, Respondent No.1 has already filed the application at "Exhibit-63" for rejection of the plaint, as the valuation was not correct or not proper. The Trial Court has not decided the application at "Exhibit-63" and, therefore, as the application filed by the Petitioner was at the very belated stage, after some right has accrued to Respondent No.1, the Trial Court was justified

in rejecting the said application. Further it is submitted that, the Suit is filed in the year 2006 and now it is ready for final hearing. At this stage, if such application for amendment is allowed, again it will re-open the case and, therefore, no interference is warranted in the impugned order passed by the Trial Court.

9. In my considered opinion, by the said application, the Petitioner is only seeking to correct the paragraph number and nothing more than that, so as to affect the rights of Respondent No.1 prejudicially, which cannot be compensated in terms of money. It may be true that, there is definitely a gross negligence on the part of the Petitioner in filing this application. He has not corrected the paragraph number, though it was brought to his notice, when the amendment application was decided. Thereafter also, for fourteen days, he did not carry out amendment and then filed this application and, as observed by the Trial Court, meanwhile, Respondent No.1 has also filed application for rejection of the plaint, as the valuation of the suit claim was not correct. In such situation, there may be some substance in the contention raised by learned counsel for Respondent No.1 that, no interference is warranted in the impugned order passed by the Trial Court.

10. However, in my considered opinion, having regard to the laws, which are procedural in nature, and also considering that on account of

technical defect, the Petitioner should not lose his case or the Suit, the interest of justice always requires that procedural laws should be so interpreted, as to advance the substantial cause of justice and not to scuttle the course of justice. At the same time, to compensate Respondent No.1, it is necessary to impose heavy costs on the Petitioner for his negligent conduct throughout the proceedings.

11. Accordingly, the Writ Petition is allowed. The impugned order passed by the Trial Court is set aside, subject to payment of costs of Rs.30,000/- by the Petitioner to Respondent No.1 within a period of three weeks from the receipt of a copy of this order by the Trial Court. Thereafter, Petitioner to carry out necessary amendment within a period of eight days and then, the Trial Court to proceed with the hearing of the Suit.

12. Hearing of the Suit is expedited.

13. Rule is made absolute in the above terms.

[DR. SHALINI PHANSALKAR-JOSHI, J.]