

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.8259/2018

Ramesh Dagadu Kamble ... Petitioner

V/s.

Nirmala Meghvarna Sarvagoad & Ors. ... Respondents

Mr. S. S. Inamdar for the Petitioner

Mr. Satish S. Raut for Respondent Nos.1 to 5.

CORAM: K.K. TATED, J.

DATED : DECEMBER 5, 2018

P.C. :

1 Heard. By this Writ Petition under Article 227 of the Constitution of India, the Petitioner Defendant No.1 seeks to challenge the order dated 11.07.2018 passed by the Jt. Civil Judge, Junior Division, Mohol, Dist. Solapur below Exhibit- 118 in Regular Civil Suit No. 162/2010 rejecting the Petitioner Defendant No.1's Application under Order 6 Rule 17 of the Code of Civil Procedure, 1908 for amendment in the written statement.

2 The learned counsel for the Petitioner submits that the Trial Court has failed to appreciate that as soon as he received a copy of the Will dated 25.02.1996, he made an Application for amendment of his written statement. He submits that the Trial Court has failed to consider this fact. He submits that the court can allow the amendment in case of subsequent event. In support of his contention, the learned counsel for the Petitioner

relies on the judgment of this court in the matter of ***Krishnaji Shankar Moghe Vs. Sitaram Gangadhar Shende 2003 (1) Mh.L.J. 233***. Paragraph 7 thereof reads thus.

“7. 7. Merely because a party to the proceedings will have to lead evidence consequent to the amendment of the pleadings, that cannot be a justification for refusal of the application for amendment of the pleadings. Once it is not in dispute that the facts which are sought to be introduced by way of amendment to the pleadings are relating to the events which have occurred after initiation of the proceedings and those facts are in relation to the subject matter of the dispute between the parties, and necessary to decide the real question in controversy, merely because there is delay in filing the application, the same cannot be a justification to refuse the party to amend the pleadings, unless allowing such amendment would result in taking away of any right which might have already accrued to the opposite party. Perusal of the proposed amendment nowhere discloses that allowing the petitioner to amend the pleadings as prayed for would in any manner result in taking away of any right of the Respondents. In fact the proposed amendment is necessary to decide real question in controversy.”

3 On the basis of these facts, the learned counsel for the Petitioner submits that the impugned order is liable to be set aside and this Hon'ble Court be pleased to allow the Application made by the Petitioner Defendant No.1 below Exhibit- 118 in Regular Civil Suit No. 162/2010 permitting the Petitioner to carry out amendment in the written statement.

4 On the other hand, the learned counsel for the Respondent has vehemently opposed the Writ Petition. He submits that in Application below Exhibit- 118, the Petitioner Defendant No.1 has given reason for not placing the Will dated 25.02.1996 on record

i.e. by mistake it remained on his part to do so. Therefore, there is no question of allowing the Writ Petition.

5 It is to be noted that admittedly, the final arguments of Respondent Plaintiff is over. Thereafter the Petitioner Defendant No.1 had made an Application for amendment in the written statement to place on record the Will Deed dated 25.02.1996.

6 In view of the amendment to the Code of Civil Procedure, 1908, there is no question of permitting the Petitioner to allow to amend the written statement when the matter is part-heard before the Trial Court.

7 The authority relied on by the Petitioner in Krishnaji Moghe (supra) is not applicable in the facts and circumstances of the present case. Only those facts which occur after initiation of the proceedings, the Court consider while granting an application for amendment in the pleadings.

8 In view of the above mentioned facts and as the matter is already kept for final hearing i.e. for the Petitioner Defendant's arguments, I do not find any reason to entertain the Writ Petition. Hence, the Writ Petition stands rejected.

9 The Trial Court is directed to decide Regular Civil Suit No. 162/2010 as early as possible but in any case before March, 2019.

(K. K. TATED, J.)