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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION (STAMP) NO.23835 OF 2018

Vikaskumar G. Jain & Anr.

...Petitioners

V/s.

Premchand R. Jain & Ors.

...Respondents

Mr.G.S. Godbole i/b Mr.Ratnesh Dube with Ms.Rutuja Ambekar for
the Petitioner.

Mr.U.G. Dindore for the Respondent No.2.

CORAM : R.D. DHANUKA, J.

DATE : 19TH OCTOBER, 2018.

P.C. :-

1. The papers are allowed to be produced at 3:00 p.m.
2. By this petition filed under under Article 227 of the Constitution of India, the petitioners (original defendant nos.2 and 3) have impugned the order dated 31st July, 2018 passed by the learned Joint Civil Judge, Junior Division, Wadgaon, Pune below Exhibits 222 and 223 filed by the defendants for discarding the copy of the amended plaint and allowing the application (Exhibit – 223) filed by the plaintiffs for carrying out additional amendment.
3. It is not in dispute that the learned Trial Court allowed the amendment application filed by the original plaintiffs by an order dated 16th March 2016. However, the original plaintiffs added certain

additional words beyond the scope of the amendment permitted by the learned Trial Court in the plaint. The defendants raised an objection to the said additional words included in the plaint which were not permitted by the learned Trial Court while passing the order dated 16th March, 2016. At that stage, the original plaintiffs filed a fresh application for amendment of the plaint so as to insert those additional words which were already inserted by the plaintiffs while carrying out amendment pursuant to the order dated 16th March, 2016.

4. Mr. Godbole, learned counsel for the petitioner submits that the original plaintiffs under the agreement entered into between the parties was between the original plaintiff no.1 and the defendant no.1 and not between the agents, servants and the employees of the plaintiff no.1 and thus under the guise of carrying out amendment pursuant to the order passed by the learned Trial Court dated 16th March, 2016, the plaintiff no.1 could not have at their own add the additional words i.e. agents, servants and the employees in the plaint. He submits that when the defendants applied for issuance of the witness summons before the learned Trial Court, such application was rejected on the ground that the trial had already commenced, whereas though the plaintiff no.1 amended the plaint beyond the scope of the order passed by the learned Trial Court, the learned

Trial Court allowed the second application for amendment inspite of the fact that the trial having been commenced.

5. Learned counsel appearing for the original plaintiff no.1 on the other hand submits that the plaintiffs who had filed the suit would obviously include their agents, servants and the employees of the plaintiff no.1 and thus no prejudice would be caused to the defendant no.1 even if the plaintiff no.1 added those words in the plaint pursuant to the order dated 16th March, 2016 passed by the learned Trial Court without allowing the plaintiff no.1 to add those words.

6. It is not in dispute that in the first application filed by the plaintiffs for amendment under Order VI Rule 17 of the Code of Civil Procedure, 1908, the words agents, servants and the employees were not included in the schedule to the application for amendment. It is also not in dispute that in the original plaint filed by the plaintiffs, it was not the case of the plaintiffs that the plaintiffs would mean their agents, servants and the employees. The agreement between the plaintiff no.1 and the defendant no.1 was only between those parties *inter-se* and not with the agents, servants and the employees of the plaintiff no.1. In my view by seeking such amendment so as to insert those words agents, servants and the employees of the plaintiff no.1 and that also after having been already carried out such amendment

illegally under the guise of the order passed by the learned Trial Court on 16th March, 2016, the plaintiffs were seeking the reliefs also in favour of such agents, servants and the employees, which was not permissible. In my view, the impugned order passed by the learned Trial Judge rejecting the application filed by the defendant no.1 and allowing the application filed by the plaintiff no.1 is *ex-facie* perverse and thus deserves to be set aside.

7. I therefore, pass the following order :-

a). The impugned order dated 30th July, 2018 passed by the learned Trial Court allowing the application (Exhibit – 223) is quashed and set aside. The application (Exhibit -222) filed by the defendant nos.2 and 3 is allowed.

b). The plaintiffs are directed to delete those additional words which were beyond the scope of the order passed by the learned Trial Court on 16th March,2016 within one week from today. The amended portion of the plaint shall be served upon the defendants within one week from the date of carrying out amendment.

8. The writ petition is accordingly disposed of in aforesaid terms. There shall be no order as to costs.

9. All the parties as well as the learned Trial Court to act on the authenticated copy of this order.

Vasant
Anandrao Idhol

Digitally signed by Vasant
Anandrao Idhol
Date: 2018.10.20 11:16:18
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(R.D. DHANUKA, J.)