

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition NO. 9534 OF 2009

Kishan Shankar Lanke

...Petitioner

Versus

Kondiba Baburao Varal

And Ors.

...Respondents

....

Mr. Prabhakar Jadhav i/b. V.P. Sawant, Advocate for the Petitioner.

Mr. S.P. Srivastava, Advocate for Respondents No.1(i) to 1(iii).

....

CORAM : R. G. KETKAR, J.

DATE : 18th JUNE, 2018

P.C.

1. Heard Mr. Prabhakar Jadhav, learned counsel for the petitioner and Mr. S.P. Srivastava, learned counsel for respondents No.1(i) to 1(iii), at length.

2. Mr. Jadhav states that L.Rs. of respondent No.2 being respondents No.2(a) to 2(e) are already on record. Though by order dated 17.3.2011, Writ Petition was disposed of as against respondent Nos.2(c) to 2(e), as per order dated 9.7.2012 Civil Application No.1323/2011 was allowed and the Petition is restored against respondents No.2(c) to 2(e). Mr. Jadhav submitted that even in the trial Court, respondents No.2(a) to 2(e) though are brought on record are not participating in the trial.

3. Rule. Mr. Srivastava waives service on behalf of respondents No.1(i) to 1(iii). Having regard to the narrow controversy raised in this Petition as also at the request and by consent of the parties, Rule is made returnable forthwith and the petition is taken up for final hearing.

4. By this Petition under Article 227 of the Constitution of India, the petitioner, hereinafter referred to as the 'plaintiff', has challenged the judgment and order dated 10.8.2009 passed by the learned Judge, Court Room No.8 of the Small Causes Court at Bombay below Exhibit-12 in L.E. Suit No.181/2000. By that order, the learned trial Judge rejected the application filed by the plaintiff under Order VI Rule 17 of Code of Civil Procedure, 1908 (for short, 'C.P.C.') for amending the plaint so as to bring on record the subsequent developments that took place pending suit.

5. Mr. Jadhav submitted that initially the plaintiff had instituted Suit being Suit No.4817/1990 in the City Civil Court at Mumbai. As per the judgment of this Court, the plaint in that suit was ordered to be returned to the plaintiff for presentation before the appropriate Court, namely, Small Causes Court. Accordingly the plaint was returned to the plaintiff and the suit is renumbered as L.E. Suit No.181/2000. Pending that suit, the plaintiff took out application being Interim Notice No.299 of 2007 for amending the plaint by adding the plaintiff's new

address as also paragraph-11-a and amendments of paragraphs-12, 13, 15, prayer clauses (a), (b), (c) etc.

6. Mr. Jadhav invited my attention to paragraph-11-a of the proposed amendment and submitted that in view of the subsequent developments that took place pending the suit, the learned trial Judge was not justified in rejecting the application. He submitted that the learned trial Judge rejected the application principally on the ground that the plaintiff had not given details regarding the incident when premises were allotted to him in a newly constructed building. If the application for amendment is allowed then it will give rise to another question regarding fact of giving premises in a newly constructed building and the same will be remained unsolved as details and particulars are not given by the plaintiff. He submitted that having regard to the fact that the suit is prior to amendment of C.P.C. of 2002, the learned trial Judge ought to have adopted liberal approach while considering the application for amendment. He, therefore, submitted that the impugned order deserves to be set aside.

7. On the other hand, Mr. Srivastava supported the impugned order. He has taken me through the plaint as it stood prior to amendment, the schedule of the proposed amendment and paragraph-5 of the impugned order. He reiterated that the plaintiff has not disclosed

the details regarding when the premises in question were allotted to him in the newly constructed building. He submitted that if the amendment is allowed as the details and particulars are not given by the plaintiff, the Court will not be in a position to resolve the controversy between the parties. He, therefore, submitted that no case is made out for interfering with the impugned order.

8. I have considered the rival submissions advanced by the learned Counsel for the parties. I have also perused the material on record. As noted earlier, the plaintiff had earlier instituted suit in the year 1990 in the City Civil Court. In view of the decision of this Court, the plaint was ordered to be returned to the Small Causes Court. After return of the plaint, the suit is re-numbered as L.E. Suit No.181/2000. In other words, the suit is instituted prior to amendment in C.P.C. of 2002. In that context, the learned trial Judge should have proceeded to dispose of the application on the basis of unamended provisions of the Order VI Rule 17 of C.P.C. It is also settled principle of law that at the stage of deciding the application for amendment, the Court cannot go into the merits of the amendment.

9. I have already noted the findings recorded by the learned trial Judge in paragraph-5 of the impugned order for rejecting the application. In my opinion, the learned trial Judge was not justified in

rejecting the application on the ground that the plaintiff did not give details as to when the premises were allotted to him in the newly constructed building and as he has not given the details and particulars, the controversy between the parties cannot be resolved. In my opinion, it is a matter of evidence and the trial Court can certainly resolve this controversy on the basis of evidence on record. At the threshold by declining the amendment, the plaintiff will be precluded from bringing on record these developments.

10. In view thereof, the impugned order cannot be sustained and as such is liable to be set aside. In the result, the impugned order is set aside. Application made by the plaintiff at Exhibit-12 is allowed. The plaintiff shall carry out the amendment within four weeks from today. After the amendment is carried out, the Court will proceed with the suit after ensuring presence of respondents No.2(a) to 2(e). The defendants will file their amended written statement within eight weeks from today. Rule is made absolute in aforesaid terms with no order as to costs. Order accordingly.

(R. G. KETKAR, J.)