

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.11220 OF 2011

M/s Shri Associates	... Petitioner
v/s	
M/s Technofour	... Respondent

Mr Ajay Joshi for Petitioner.
Mr S.S. Kanetkar for Respondent.

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CORAM : B.P. COLABAWALLA J.

DATE : 30TH NOVEMBER, 2018.

P.C. :-

1. Rule. Respondent waives service. By consent of parties, rule is made returnable forthwith.

2. By my order passed today in Civil Application (L) No.18368 of 2018, the Applicant therein was joined as Petitioner No.2 to the present Petition. The amendment is to be carried out forthwith. Without waiting for the formal amendment to be carried in the Writ Petition and considering that it has been pending since the year 2011, the same is taken up by consent of both the parties.

3. This Writ Petition has been filed challenging the order passed by the Civil Judge, S.D., Pune dated 24th November 2011. (below Exh.62). Exh.62 was an application for amendment of the plaint in Special Civil Suit No.633 of 2008. By the amendment application, the Petitioner (original Plaintiff) sought to amend the plaint in terms of paragraphs 5 to 8 of Exh.62. This amendment was partly allowed and the original Plaintiff was allowed to carry out amendment only in terms of paragraph 6 of Exh.62. It is being aggrieved by this part amendment that the present Writ Petition has been filed.

4. I have heard the learned counsel for the parties at length and perused the papers and proceedings along with the impugned order. Paragraph 6 of Exh.62 and which has been allowed, deals the averment of the Plaintiff with reference to a letter issued by the Officers of the Pune Municipal Corporation dated 4th May 2010 and it has been averred that this letter is void, ab-initio. This amendment has been allowed by the Trial Court. However, the consequential amendment which seeks to add a prayer seeking a declaration that the letter dated 4th May 2010 is void ab-initio (as set out in paragraph 7 of Exh.62), has been disallowed by the impugned order.

Along with this, even joining the Pune Municipal Corporation as a party Defendant has been disallowed by the Trial Court.

5. As far as the consequential prayer as set out in paragraph 7 of Exh.62 is concerned, I fail to see how the Trial Court could have disallowed this amendment. Once the Trial Court allowed the amendment as set out in paragraph 6 of Exh.62, then as a consequence, the amendment sought for in paragraph 7 of Exh.62 ought to have been allowed by the Trial Court, without which the amendment allowed in terms of paragraph 6 would be rendered an empty formality. This being the case, I find that the Trial Court was in error in not allowing the amendment as set out in paragraph 7 of Exh.62.

6. However, the same cannot be said with reference to paragraph 8 where the Plaintiff seeks to join the Pune Municipal Corporation. In the inter-se dispute between the Plaintiff and the Defendant the Pune Municipal Corporation is neither a necessary nor a proper party. This being the case, the Trial Court was justified in not allowing the amendment as sought for in paragraph 8 of Exh.62.

7. In these circumstances, it is ordered that the Plaintiff is allowed to amend the plaint only to the extent as set out in paragraphs 6 and 7 of Exh.62.

8. The Writ Petition therefore partly succeeds and rule is made absolute in the aforesaid terms. However, there shall be no order as to costs.

9. It is made clear that I have not opined on the merits of the case and it will be open to the Defendant to take any ground before the Trial Court, including but not limited to the fact that the declaration sought with reference to the letter dated 4th May 2010 can never be given by the Trial Court. All issues with reference to this amendment including limitation are expressly kept open to be agitated by the Defendant at the appropriate stage before the Trial Court.

(B.P. COLABAWALLA J.)