

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION (STAMP) NO. 34754 OF 2017

Mr.Kumaran Joshi

Also an adult, Occ. Business,
Carrying on business in the name and
style of M/s.Reliance Elevators
As the sole Proprietor thereof at
Vishal Tower, 501, Indira Complex,
Near Bus Depot, Indore (M.P.)
And permanent resident of
'Prakash Bhavan', Karingannore P.O.
Kottarakkara, District Kollam,
Kerala State - 691 516

]
]
]
]
]
]
]
]
]
]
]
]

Petitioner

Versus

Sreedharan Gopinathan

An adult, Occ.Service,
Residing at "Indraprastha",
Karingannore P.O.,
Kottarakkara, District Kollam,
Kerala - 691 516

]
]
]
]
]
]
]

Respondent

- Mr.E.A. Sasi for the Petitioner.
- Mr.E.K. Sasidharan for the Respondent.

CORAM : DR.SHALINI PHANSALKAR-JOSHI, J.

DATE : 11th JANUARY, 2018.

P.C. :

1] Heard learned counsel for the Petitioner and the
Respondent.

2] By this Writ Petition filed under Article 227 of the Constitution of India, the Petitioner is challenging the order dated 27th October, 2017, passed by the City Civil Court, Mumbai, thereby dismissing the Chamber Summons No.1526 of 2017 filed in Suit No. 9244 of 1995 (High Court Summary Suit No. 4391 of 1995).

3] The Petitioner is the original Defendant in the said suit and the Chamber Summons was moved by him for amendment of the written statement on the ground that he has approached his maternal uncle Mr.K.Shridharan, who is a retired Chief Judicial Magistrate and practicing as an Advocate in a Court at Kollam District, Kerala for drafting of the reply and the written statement. However, in the reply, which he has prepared and which was filed by the Petitioner to the summons for judgment of the said suit and in the written statement prepared and filed subsequently, certain facts remained to be pleaded. Hence, in order to bring on record, the real controversy between the parties, those facts being necessary, it was submitted that the amendment in the written statement needs to be allowed.

4] At this stage, it may be stated that the Respondent herein has filed a Summary Suit for recovery of Rs.3,43,675/- against the Petitioner with further interest on the principal amount at the rate of

18% per annum. The said suit came to be decreed *ex-parte* on 24th March, 2015. The Petitioner, thereafter, appeared in the suit and the said *ex-parte* decree came to be set-aside on 7th August, 2017. Thereafter, he has also filed the reply and the written statement in the suit and then in the year 2017 he has moved this Chamber Summons for amendment in the written statement, which came to be dismissed.

5] The first question to be considered in this Writ Petition therefore is whether the proposed amendment is changing the nature of the defence and the answer thereto is yes. In the written statement, the Petitioner has admitted that the Respondent has accessibility in the Petitioner's office as the Respondent was serving with the Petitioner as a confidential assistant and secretary. It was further stated that the Respondent was residing in the office of the firm of the Petitioner; thereafter in October, 1992, the Respondent left the job and at that time, the Petitioner has issued Cheque of Rs.1,35,000/- to him towards full and final settlement of his dues. After dishonour of the said Cheque, the Petitioner made entire payment of Rs.1,35,000/-. It was further averred that, in the absence of the Petitioner, the Respondent removed signed Stamp paper for Rs.10/- with ulterior motive to deceive the Petitioner.

6] However, in the proposed amendment, the Petitioner is coming with a totally new case that the Respondent assured the Petitioner that he will search a job for him. The Petitioner, therefore, accompanied the Respondent and joined his Company. He also started to take independent contracts. Thereafter, he shifted to Delhi. The Respondent suggested to him to start an independent business, the risk of which will be with the Respondent. The Respondent also opened a current account in the name of Proprietary concern of the Petitioner, as suggested by the Respondent. Accordingly, the account was opened. The Respondent invested an amount of Rs.65,000/- and kept the Cheque-book in his custody. At the instance of Respondent, the Petitioner gave him the blank signed cheque. The Respondent stopped investing the money and demanded this amount back and then, under the threat, obtained the Cheque for the amount of Rs.1,35,000/- from the Petitioner. The Respondent also obtained the signature of the Petitioner on blank papers and Stamp Paper of Rs.10/- by giving threat to kill him. The Cheque came to be dishonored. Then, out of the said amount of Rs.1,35,000/-, the Petitioner paid the amount of Rs.65,000/- as the Respondent gave him threat to file the criminal case.

7] Thus, even a cursory glance to the averments made in the written statement and the averments made in the proposed amendment is more than sufficient to disclose that the Petitioner is coming out with a totally new case. In the written statement, he has admitted that he issued Cheque to the Respondent in full and final settlement of the dues payable to the Respondent towards his job. However, now by way of amendment he is coming with a new case that the Respondent obtained the Cheque and his signature on the Stamp paper, under duress. Thus, the Petitioner, now wants to give a go bye to his earlier stand and plead a new case which was neither stated or averred in the reply to the summons of the judgment nor in the written statement. It becomes rather difficult to accept that the Petitioner has signed on the reply and the written statement preferred by his maternal uncle without going through the same. It also cannot be accepted that this fact, that these contents were not stated in the reply or in the written statement came to his knowledge for the first time in the year 2017.

8] It is pertinent to note that the suit is of the year 1995, the said suit was decided *ex-parte* and now when it is restored, the Petitioner has filed this application for amendment of written

statement after about 22 years thereby further protracting the hearing of the suit.

9] Considering all these facts, the trial Court has rightly rejected the Petitioner's application for amendment of the written statement. The impugned order passed by the trial Court being just, legal and correct; no interference is warranted therein in the writ jurisdiction of this Court.

10] Writ Petition, therefore being, without merits, stands dismissed.

11] At the request of learned counsel for the Petitioner, it is clarified that whatever observations made here-in-above are only for the purpose of deciding this Writ Petition and the trial Court is not to be influenced by the same in any way.

[DR.SHALINI PHANSALKAR-JOSHI, J.]