

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO.293/2018

Mahadeo Underbhan Sarode
Vs.
Prakash Mohansing Rathod

Office notes Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Shri Anand Deshpande, Advocate for petitioner.
Shri A.S.Shukla, Advocate for respondent-sole.

CORAM : A.S.CHANDURKAR, J.
DATED : August 26, 2019

The order passed by the trial Court allowing the defendant to amend the written statement with a view to raise a counter claim is the subject matter of challenge in this writ petition filed at the instance of the original plaintiff.

The plaintiff on 08.05.2015 has filed a suit for recovery of amount of Rs.2,00,000/-. Initially the defendant was proceeded without written statement but that order was subsequently set aside and permission to file the written statement was granted. In the written statement dated 20.09.2016 it has been specifically pleaded by the defendant that by way of hand loan an amount of Rs.85,000/- was advanced to the plaintiff which was to be returned by 30.03.2015. The issues were thereafter framed on 31.01.2017. Pursuant thereto an affidavit in lieu of evidence was placed on record. The defendant on 06.10.2017 sought to amend the written statement so as to raise a counter claim with regard to amount of Rs.85,000/-. The application was opposed by the plaintiff and the trial Court allowed that application for amendment on the ground that except placing the affidavit in lieu of evidence on record, nothing further had been done. That order is under challenge.

Shri A.S.Deshpande, learned counsel for the petitioner by relying upon the decision in ***Vidyabai and others Vs. Padmalatha and another, (2009) 2 SCC 409***, submits that with the filing of the affidavit in lieu of evidence, the trial had commenced. In absence of any pleading with regard to due diligence, the amendment could not have been allowed to enable the counter claim to be raised. Ignoring this vital aspect, the application was allowed.

On the other hand Shri A.S.Shukla, learned counsel for the respondent by relying upon the decisions in ***Mahendra Kumar and Another Vs. State of Madhya Pradesh and others, (1987) 3 SCC 265*** and ***Baldev Singh and others Vs. Manohar Singh and another, (2006) 6 SCC 498*** submits that since the relevant pleadings with regard to amount of Rs.85,000/- being given by way of hand loan were already pleaded, the trial Court did not commit any error in permitting the counter claim to be raised. It was thus submitted that no interference with the impugned order was called for.

On hearing learned counsel for the parties, I find that the trial Court was justified in allowing the application below Exhibit 20. In the written statement it has been specifically pleaded that an amount of Rs.85,000/- was given by way of hand loan to the plaintiff. The same was to be returned by 30.03.2015, but it was not done so. By seeking to amend written statement a prayer clause for raising the counter claim was sought to be brought on record. In the light of the fact that all necessary pleadings indicating the entitlement of the defendant to return the amount of Rs.85,000/- has been specifically pleaded in the written statement and the cause of action was stated to have arisen before filing of the written statement, the trial Court was justified in permitting the same to be raised. The aspect of due diligence to seek the amendment in the present case would not be of much importance especially when the defendant in his specific pleadings has referred to amount of Rs.85,000/- being given to the

plaintiff by way of hand loan.

In that view of the matter, I do not find any jurisdictional error committed by the trial Court while allowing the application. By clarifying that the trial Court shall decide the suit on its own merits without being influenced by any observations made in this order, the writ petition stands dismissed. No costs.

JUDGE

Andurkar.