

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.3511 OF 2018

KISHOR NAMDEO KOLI
VERSUS
SURESH MURLIDHAR PACHPANDE AND ANOTHER

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Advocate for Petitioner : Shri Deshmukh B.G. h/f Shri Deshmukh A.I.
Advocate for Respondents 1 & 2 : Shri Bhokarikar Madhav M.

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CORAM : RAVINDRA V. GHUGE, J.
Dated: March 11, 2019

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PER COURT :-

1. The petitioner / original plaintiff is aggrieved by the order dated 13.11.2017 passed by the trial Court, vide which, his application Exhibit 22, seeking amendment to the plaint for correcting a typographical error in SCS No.8 of 2017, has been rejected.

2. I have heard the learned Advocates for the respective sides at length.

3. The genesis of the suit is an agreement to sell, dated 9.1.2014, which was notarized on 10.1.2014. A vehicle was claimed to have been purchased by the plaintiff from the defendant. In the plaint, the Engine Number to the extent of the alphabets have suffered errors. Even the name of the vehicle in the plaint is mentioned as 'Tabera'

instead of 'Tavera'. It is stated that as it was noticed that there were errors in the chassis number, engine number as well as the registration number in the plaint, when compared with the details set out in the agreement to sell, that the plaintiff moved application Exhibit 22. The trial Court has rejected the application on the ground that as the agreement to sell was in the custody of the plaintiff, he should have cross-checked while typing the said details in the plaint.

4. Learned Advocate for the defendant has taken a specific stand that the agreement to sell is a forged document and such a document was never in existence.

5. The issue, therefore, is as to whether the plaintiff can be said to be introducing a new identity of a vehicle in the suit or whether he sticks to the details of the vehicle set out in the agreement to sell.

6. I find that not only has the model number 'Tavera' been wrongly typed, the chassis number, the engine number and the registration number suffer minor defects in the plaint. Such typographical mistakes have also been committed in the impugned order, where, a different chassis number has been typed. Such mistakes cannot be ruled out and correction of such mistakes is necessary to avoid further complications post judgment and decree of

the trial Court.

7. The care that is required to be taken by the Court is, that a litigant should not be permitted to introduce a new vehicle or identity of a vehicle in the suit under the pretext of carrying out a correction. On these premises, I called upon the petitioner to make a statement as to whether he is agreeable to prosecute the suit on the basis of the details found in the agreement to sell. He has answered in the affirmative and reconfirms, on instructions, that the details set out in the agreement to sell are correct and the plaint / suit can be based on such pleadings.

8. As such, this petition is partly allowed. The impugned order dated 13.11.2017 is quashed and set aside and in the peculiar facts of this case, Exhibit 22 is partly allowed, only to the extent of permitting the petitioner / plaintiff to base his suit on the details of the vehicle set out in the agreement to sell. Those details shall now be referred to by the litigating sides, the trial Court and further Courts, in the event of further litigation. The typographical errors, appearing in the plaint or evidence, shall be ignored. It is, however, made clear that the plaintiff would now be precluded from contending that there is any mistake in the details set out in the agreement to sell. Needless to state, this would not come in way of

the defence of the defendant, that no such agreement to sell was ever signed by him.

9. In so far as costs as demanded by the defendants are concerned, with consent that the amount be donated for the treatment of poor patients. The petitioner shall deposit an amount of Rs.1,000/- with with the Government Medical College and Hospital, Aurangabad, **through Medical Officer, High Court Dispensary, Aurangabad**, either in cash or by Demand Draft (Demand Draft be drawn in the name of “**Dean, Government Medical College and Hospital Dengi Samiti, Aurangabad**”) on/or before 29.3.2019 and shall produce a copy of receipt before the trial Court on/or before 5.4.2019.

(RAVINDRA V. GHUGE, J.)

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