

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.2116 OF 2018

KADUBAI NIVRUTTI SUKALE AND OTHERS
VERSUS
NIVRUTTI VITTHAL SUKALE AND OTHERS

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Advocate for Petitioners : Shri Gangakhedkar S.S.
Advocate for Respondent 5 : Shri Undre Vikram S.

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CORAM : RAVINDRA V. GHUGE, J.
Dated: March 19, 2019

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PER COURT :-

1. On 24.2.2018, this Court had passed the following order:-

" 1 The Petitioners are aggrieved by the order dated 07.02.2018 passed by the Trial Court by which, the application Exhibit-94 filed by the Petitioners seeking amendment in the plaint in RCS No.68/2010, has been rejected solely on the ground that the Petitioners/ Plaintiffs have not mentioned the fact of the filing of the Written Statement in RCS No.74/2011.

2 It appears from Exhibit94 that the Plaintiffs are seeking additional prayers which are sought to be introduced through the amendment. Prima facie, the nature of cause of action does not appear to change.

3 Issue notice to the Respondents returnable on 28.03.2018.

4 *Copies of the petition paper book for issuance of notices shall be supplied on or before 01.03.2018, failing which, this petition shall stand dismissed without reference to the Court on 03.03.2018.*

5 *Until the returnable date in this matter, RCS No.68/2010 shall be adjourned. "*

2. Learned Advocate appearing on behalf of respondent No.5, has opposed this petition. Contention is that these petitioners had earlier been before this Court in Writ Petition No. 5806 of 2012. By order dated 10.9.2012, the petition was disposed off by recording that the petitioners / original plaintiffs were intending to move an application for seeking amendment in the suit. Thereafter, these petitioners have wasted four years and have filed Exhibit 94 on 1.3.2016.

3. He further submits that as Exhibit 94 was earlier rejected, these petitioners once again approached this Court in Writ Petition No.3043 of 2017. By order dated 18.9.2017, the impugned order was set aside and the trial Court was directed to decide Exhibit 94 afresh.

4. He then submits that the two proposed prayers would change the nature of the cause of action. The suit is about 9 years old and the petitioners intend to delay the said suit. He further submits that

the present defendant No.5 had filed RCS No.74 of 2011 against these plaintiffs and was granted temporary injunction. He, therefore, prays for dismissal of the suit and in the alternative, prays for heavy costs and a portion of which may be donated for the treatment of poor patients.

5. I find from the record that this Court had recorded the intention of the plaintiff of filing an amendment application for introducing two prayers, vide its order dated 10.9.2012. These plaintiffs preferred Exhibit 94 on 1.3.2016, which is practically after three and half years. On account of this laxity, these petitioners deserve to suffer costs.

6. I also find that the trial Court, rather than considering the merits of Exhibit 94, has ventured into recording a finding that the written statement filed by these plaintiffs in the 2011 suit, preferred by defendant No.5, was not brought to the notice of the trial Court and that the injunction granted in favour of the present defendant No.5, was also not stated. The purpose for which this Court had remitted Exhibit 94, vide its order dated 18.9.2017, has not been achieved since the trial court misdirected itself. When a consequential prayer was being put forth and as the nature of the suit would not undergo a change, the trial Court should have focused on the merits

of the contentions of the parties while deciding Exhibit 94.

7. In view of the above, this petition is allowed. The impugned order dated 7.2.2018 is quashed and set aside and Exhibit 94 is allowed with the following directions:-

(A) These plaintiffs shall deposit an amount of Rs. 5,000/- before the trial Court on/or before 5.4.2019.

(B) The petitioners shall deposit an amount of Rs.1,500/- on/or before 5.4.2019, 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”) and shall report compliance of this direction by producing a receipt of having deposited the amount, before the Registrar (Judicial) of this Court.

(C) Since defendant No.5 alone has appeared in this matter, she shall withdraw costs of Rs.5,000/- from the trial Court, unconditionally.

(D) The plaintiffs shall add the two prayers in their plaint in red ink, on/or before 5.4.2019.

(E) As the amendment can be conveniently carried out, a freshly typed amended plaint is not necessary.

(F) The request of the petitioners that RCS No.68 of 2010 be clubbed with RCS No.74 of 2011, is left open to be putforth before the appropriate forum.

(G) The trial Court would endeavour to decide RCS No.68 of 2010 as expeditiously as possible and in any case on/or before 31.3.2020.

(RAVINDRA V. GHUGE, J.)

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akl/d