

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 159 OF 2019

CMDE, SURIDER PAL SINGH BATTI AND
ANR.,

... Petitioners

Versus

TARVINDER SINGH PANDORI AND ANR.,

... Respondents

Mr. P. Talaulikar, Advocate for the Petitioners.

Mr. E. O. Mendes, Advocate for the Respondents.

Coram:- C. V. BHADANG, J.

Date:- 22nd July 2019

P.C.

The challenge in this petition is to the order dated 10.12.2018 (below exhibit 32), passed by the learned Senior Civil Judge at Vasco in Special Civil Suit No.16/2015/A.

2. By the impugned order, the application, exhibit 32, filed by the respondents for amendment of plaint has been allowed.

3. The respondents have filed the aforesaid suit against the petitioners for injunction, etc., in which the petitioners have raised a counter claim, inter alia, for specific performance of a Memorandum of Understanding (MoU) dated 10.07.2014. It appears that the written statement/counter claim was amended by the petitioners after which the respondents filed an application,

exhibit 32, for amendment of plaint, inter alia, for a declaration that the MoU is inoperable.

4. The learned Trial Court by the impugned order, has allowed the application.

5. I have heard Mr. Talaulikar, the learned Counsel for the petitioners and Mr. Mendes, the learned Counsel for the respondents. Perused record.

6. It is submitted by Mr. Talaulikar, the learned Counsel for the petitioners that the proposed amendment changes the nature of the suit and, as such, could not have been allowed. It is submitted that the reliance placed by the Trial Court on the decision of this Court in the case of HDFC BANK LTD. VS. ASHAPURA MINECHEM LTD., WRIT PETITION NO.2822/2016 decided on 18.01.2017 is misplaced.

7. Mr. Mendes, the learned Counsel for the respondents, has supported the impugned order. It is submitted that the respondents are otherwise entitled to file a written statement to the counter claim and the proposed amendment is only consequential to the counter claim and the amendment of the counter claim carried out by the petitioners.

8. I have considered the submissions made. The petitioners have raised the counter claim, inter alia, seeking specific performance of the MoU and in view of the same, the amendment, as proposed by the respondents is necessary. The suit is still at a pre-trial stage and, therefore, the rigour of proviso to Order VI Rule 17 of the Civil Procedure Code does not apply.

9. I have gone through the proposed amendment and I find that the same is necessary to decide the real controversy in the matter and particularly in view of the counter claim raised by the petitioners. The impugned order does not call for interference.

10. The petition is without any merit and is accordingly dismissed with no order as to costs.

C. V. BHADANG, J.

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