

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 10769 OF 2016

Vilas S. Banage .. Petitioner
vs.
Kashinath Rau Bhogam and ors. .. Respondents
Mr. S.R. Ganbavale for the Petitioner.

CORAM : M. S. SONAK, J.
DATE : 11 APRIL 2019.

ORAL JUDGMENT :-

1] Heard Mr. S.R. Ganbavale for the Petitioner.

2] On 3rd May 2018, this Court made the following order:

“Heard learned counsel for parties.

2 By this petition under Article 227 of the Constitution of India, the petitioner is challenging the order dated 18th June, 2014 passed by the learned 3rd Joint Civil Judge, Senior Division, Kolhapur below Exh.33 in Regular Civil Suit No.148 of 2009 rejecting the petitioner’s application under Order VI Rule 17 of the Code of Civil Procedure, 1908 (“CPC”) for carrying out the amendment in the plaint on the ground of delay and latches.

3 Considering the submissions made by the learned advocate for the petitioner and perusing the impugned order dated 18th June, 2014, I am satisfied that the petitioner has made out a case for following order.

(a) The office is directed to issue notice before admission to the respondents returnable on 30th July, 2018, stating that if the time permits the matter will be decided finally at the stage of admission;

(b) In addition to the usual mode of service, the petitioner is permitted to serve the respondents by private notice along with entire proceedings either by

Registered Post A/d and or by hand delivery and file an affidavit of service;

(c) The petitioner to place on record the complete copy of the order dated 18th June, 2014 passed by 3rd Joint Civil Judge, Senior Division, Kolhapur, below Exh.33 in Regular Civil Suit No.148 of 2009 on or before 15th June, 2018, failing which the Writ Petition shall stand dismissed without further reference to the Court;

(d) At present, no ad-interim relief.”

3] Mr. Ganbavale, learned counsel for the petitioner, states that service has been effected upon the respondents and necessary affidavit to that effect has also been filed.

4] Since the order dated 3rd May 2018 made it clear that this petition will be decided finally at the stage of admission, Rule. Rule is made returnable forthwith.

5] The challenge in this petition is to the impugned order dated 18th June 2014 by which learned Trial Judge has dismissed the petitioner's application at Exhibit-33 seeking leave to amend the plaint.

6] Learned Trial Court has dismissed the application on the ground of delay and laches. For this purpose, learned

Trial Court had adverted to the date on which the documents were executed and nature of relief proposed to be applied for by amendment to the plaint.

7] Admittedly, the application seeking leave to amend was filed before commencement of the trial. Therefore, proviso to Order 6 Rule 17 of CPC was not applicable. The issue as to whether the relief claimed for by way of amendment was barred by limitation or not could always have been kept open for determination in the suit. However, on that ground, it was not necessary to deny the petitioner even an opportunity to amend the plaint. On this short ground, the impugned order dated 18th June 2014 is liable to be set aside and is hereby set aside.

8] Accordingly, the petitioner's application at Exhibit-33 is allowed. However, it is made clear that the issue of limitation as well as all other objections which the defendants in the suit may have on merits are specifically kept open.

9] Amendment to be carried out within four weeks from the date of this order uploaded on the website. Copy of the amended plaint to be served upon the defendants in the suit and the defendants in the suit will have an opportunity to file an additional written statement within a period of six weeks from the date of service of the copy of amended plaint.

10] Rule is made absolute in the aforesaid terms. There shall be no order as to costs.

(M. S. SONAK, J.)