

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.2078 OF 2014

Rajendra Ghanshyam Pawar ...Petitioner
vs.
Dhananjay Chandrakant Shivdas and Anr. ...Respondents

Mr. V.S. Talkute, for the Petitioner
Mr. P.P. Kulkarni, for Respondent Nos. 1 and 2.

CORAM : M. S. SONAK, J.

DATE : APRIL 10, 2019

JUDGMENT

. Heard Mr. Talkute, learned counsel for the Petitioner and Mr. Kulkarni, for Respondent Nos. 1 and 2.

2. Rule. Rule is made returnable forthwith with consent of and at the request of learned counsel for the parties.

3. The challenge in this Petition is to the order dated 28th October, 2013 by which the learned trial Judge has dismissed the Petitioner's application (Exhibit 46) seeking leave to amend the Plaint.

4. From the perusal of the application seeking leave to amend, it

can not be said that the Petitioner is seeking mutually destructive relief or is seeking to make out a mutually destructive case and in fact, the Defendant, for such amendment, was allowed in the Plaint as originally instituted. Accordingly, the impugned order is required to be set aside.

5. There is however objection with regard to payment of proper Court fees and the issue of limitation. On these counts, there was no necessity to decline leave to amend the Plaint, more particularly because this is a suit instituted in the year 1999 to which the proviso Order VI Rule 17 of Code of Civil Procedure does not apply and further the application seeking leave to amend was taken out even before the commencement of the trial. However, it is not necessary to specifically keeping open all these objections. Accordingly, the objections as regards the payment of proper Court fees as well as the issue of limitation are expressly kept open, all other legitimate objections which required to have been made on the merits are also kept open.

6. The impugned order is set aside subject, no doubt, to the aforesaid terms.

7. Leave is granted to the Petitioner to amend the Plaint in terms of the amendment proposed, subject to payment of costs of Rs. 5,000/- within a period of two weeks from today.

8. The costs to be either paid to Respondents or deposited before the trial Court within two weeks. If deposited, the Respondents are at liberty to withdraw the same unconditionally.

9. The amendment to be carried out within a period of four weeks from the date of deposit/payment of costs. Copy of the amended Plaint to be furnished to the Defendants in the suit and thereafter the Defendants are granted four weeks time to file their additional written statement. If costs are not paid/deposited within two weeks from today, then this Petition shall be deemed to have been dismissed with cost of Rs. 5,000/- without further reference to this Court.

10. Rule is made absolute in the aforesaid terms.

11. Since the suit is of the year 1999 the learned trial Judge is directed to dispose of the same as expeditiously as possible.

12. All parties to cooperate with the learned trial Judge for the expeditious disposal of the matter.

13. All concerned to act on the basis of authenticated copy of this order.

(M. S. SONAK, J.)