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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.6545 OF 2018

Shashikant S.Mane

..Petitioner.

V/s.

Suresh S.Patil & Ors.

..Respondents.

Mr.Datta H.Pawar for the petitioner

None for the respondents.

CORAM : M.S.SONAK, J.

DATE : MARCH 19, 2019

P.C.:-

Heard Mr.Pawar, learned counsel for the petitioner.

2. Challenge in this petition is to the order dated April 9, 2018 by which learned trial Judge has dismissed the application seeking leave to amend the Miscellaneous Civil Application No.29/2015.

3. In the said miscellaneous civil application, the petitioner has made allegations against his advocate in the suit stating that the said advocate had not steps to bring on record the legal representatives of late Mane,

4. The petitioner by application under Order 6, Rule 17 read with and 151 of the Code of Civil Procedure seeks to now withdraw such allegations. Even this application for amendment, it appears was filed belatedly i.e. after three and half years from the date of institution

of miscellaneous civil application.

5. Mr.Pawar, learned counsel for the petitioner submits that no prejudice will occasion to the respondents if leave to amend is granted. He points out that at the stage of grant of leave to amend, the Court cannot go into the merits of what is pleaded or what is sought to be pleaded. He relies on the judgment of the Supreme Court in *Raj Kumar Bhatia V/s. Subhash Bhatia* [Civil Appeal No.19400 of 2017 arising out of SLP(C) NO.8858 OF 2017] in which it is laid down that whether the amendment should be allowed or not is dependent on whether the suit will independently succeed at the trial.

6. In the present case, the petitioner has not explained the delay of 13 years in filing an application for setting aside the dismissal of the suit for default but for making allegations against his previous advocate. In fact on the basis of such allegations, the petitioner has sought for condonation of delay of 13 years.

7. Learned trial Judge has noted that there was no merit in the allegations made, since, the previous advocate had taken steps to bring on record the legal representatives of late Shamrao Mane. This means that on the basis of false allegations, the petitioner had sought for condonation of delay of 13 years. The settled position is that there is any mis-statement or false statement made in the application seeking condonation of delay, then, the discretion should not be exercised for

condonation of delay.

8. The petitioner realising this after three and half years seeks leave to amend the application and withdraw the allegations against his previous advocate. The amendment in these circumstances cannot be said to be *bona fide*. The petitioner having made allegations against his previous advocate in a casual manner and thereafter upon realizing these allegations cannot be substantiated or rather those allegations are false seeks to place hide and seek with the Court.

9. This is not where learned trial Judge has gone into the merits of the matter of the proposed amendment. Accordingly, the decision in the case of *Raj Kumar Bhatia (supra)*, will not apply to the proposition which Mr.Pawar advances.

10. However, the decision of *Raj Kumar Bhatia (supra)* is applicable for yet another proposition which lays down. In this case, the discretion has been exercised by learned trial Judge consistently the principle applicable for deciding the application seeking leave to amend the. There is neither jurisdictional error nor any unreasonablity in the exercise of discretion. In such circumstances, as held in *Raj Kumar Bhatia (supra)*, no interference is warranted under Article 227 of the Constitution of India.

11. Mr. Pawar placing reliance upon *Sadhna Lodh V/s. National*

*Insurance Company*¹ has held the supervisory jurisdiction conferred on the High Court under Article 227 of the Constitution of India is confined only to see whether an inferior Court or a tribunal has proceeded within the paramaters of its jurisdiction. In the exercise of its jurisdiction under Article 227 of the Constitution of India, the High Court does not act as an appellate Court or Tribunal and it is not open to it to review or reassess athe evidence upon which the inferior Court or Tribunal has passed an order.

12. In this case, the trial Court had only exercised jurisdiction vested in it and applying the correct principles has rejected the belated application for amendment. Accordingly, there is no reason made out for invocation of jurisdiction under 227 of the Constitution of India. Besides, this is a case where good faith is lacking on the part of the petitioner. This is an additional reason for not exercising jurisdiction under section 227 of the Constitution of India.

13. For all the aforesaid reasons, the petition is dismissed.

14. There shall be no order as to costs.

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

(M.S.SONAK, J.)

1 (2003) 3 SCC 524