

Sequeira

*IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION*

***WRIT PETITION NO. 10752 OF 2014***

Basavraj Biddappa Ajari

.. Petitioner

*Vs*

Kalpavruksha Earth Movers Excavation  
and another

.. Respondents

Ms.Manjiri S.Parasnis, for the Petitioner.  
None for Respondents.

***Coram : N.M.Jamdar, J.  
Date : 28 January 2019.***

***Oral Order :***

Heard learned counsel for the Petitioner.

2. By order dated 6 January 2015, at the time of issuance of notice, the learned Single Judge has put the parties to notice that the Petition will be heard at the stage of admission. The Respondent No.1-original Plaintiff is served. None appears for the Respondent No.1.

3. The Petitioner is Defendant No.2 in the suit filed by Respondent No.1-Plaintiff. Respondent No.2 is the other

Defendant. Special Civil Suit No.218 of 2000 is filed by the Plaintiff in the Court of Civil Judge Sangli, for recovery of amount stated to be due from the Defendants along with interest. The Petitioner filed a Written statement on 3 December 2001 wherein the Petitioner has taken a stand in paragraph no.7 of the Written statement that Petitioner has no concern with the Defendant No.2 nor with any partnership firm. By way of amendment application moved on 28 July 2014, the Petitioner sought to implead details to elaborate the stand that the Petitioner was not concerned with the firm or with Defendant No.2. This application has been rejected by the impugned order.

4. Learned counsel for the Petitioner submitted that as regards delay in moving the application for amendment is concerned, the suit was decreed thereafter the decision was challenged by way of first Appeal in this Court and this Court had remanded the proceedings to the learned Civil Judge and after the remand the application for amendment is made. The learned counsel for the Petitioner relied upon the decision in the case of *Sajjan Kumar Vs Ram Kishan – (2005) 13 Supreme Court Cases 89* and decision of the Single Judge of this Court in the case of *Vitthal Mhaskuy Mandhre Vs Mugutrao Vishnu Sanas (D) thr. legal heirs – 2019(1) ALL MR 316*, to contend that even if the amendment to Written Statement is made at belated stage, that cannot be the only ground for rejection of the application, if the amendment otherwise does not

change nature of the pleadings and does not cause prejudice to the other side. The learned counsel further submitted that in the present case there is no change in the stand taken by the Petitioner and only by way of elaboration certain facts are sought to be pleaded.

5. The learned Civil Judge in the impugned order has referred to the fact that the suit is pending for ten years. Thereafter the learned Civil Judge has recorded that there is no contrary stand taken by the Petitioner. The learned Civil Judge has noted that material facts are already pleaded. The learned Civil Judge has apart from this only referred to the case law and has rejected the application. There is no reason at all indicated in the impugned order as to why the application for amendment is rejected. The Petitioner has stated that it has no concern with partnership firm and other Defendant, in one line. The Petitioner may face difficulties in case a stand is taken that the Petitioner cannot lead evidence for lack of particulars.

6. At the time of issuance of notice in the year 2015, the learned Single Judge of this Court has stayed the further proceedings of the suit, yet the Respondent-original Plaintiff has not appeared to contest this Petition. The other Defendant who has neither filed the suit nor has contested the application for Written Statement is deleted by the Petitioner.

7. Considering these facts, I do not find that either any prejudice would be caused to the Respondent-Plaintiff if the amendment is allowed, no any new case is being introduced. The delay has been sufficiently explained. In the circumstances, the Petition deserves to be allowed and the amendment needs to be granted.

8. Accordingly impugned order dated 22 August 2014 is quashed and set aside and the application filed by the Petitioner below Exhibit No.105 in Special Civil Suit No.218 of 2000 pending on the file of learned Civil Judge, Senior Division Sangli, is allowed. The Petitioner will carry out amendment within period of four weeks from the date of writ of this Court reaches the Civil Court. Needless to state that the ad-interim order staying further proceedings in the suit stands vacated.

*(N.M.Jamdar, J.)*