

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION No. 11862 OF 2018
WITH
CIVIL APPLICATION No. 2277 OF 2018

Basil S. Rath

... Petitioner
(Applicant in Civil Application)

Vs.

Smt. Vidhya Chandrakant Patil & Anr.

... Respondents

Mr. I. G. Damani, for the Petitioner

Ms. Amruta Athavale i/b Ms. Racheeta R. Dhuru, for Respondent
No. 1.

CORAM : M. S. SONAK, J.

DATE : MARCH 14, 2019

ORAL JUDGMENT:

1. Rule. Rule is made returnable forthwith. Ms. Amruta Athavale, waives notice for Respondent No. 1. By consent of parties, the petition is taken up for final hearing.

2. Heard Mr. I. G. Damani, the learned for the petitioner and Ms. Amruta Athvle for the respondent No. 1.

3. The challenge in this petition is to the order dated 30th November, 2017, the operative part of which reads as follows :

“1. Contempt Notice of Motion No. 295 of 2017 is hereby disposed of with directions to the Plaintiff to move

for correction of paragraph numbers in the schedule of the amendment in Chamber Summons No. 144 of 2016 and the amendment carried out by her in the plaint accordingly.

2. Costs in cause.”

4. Mr. Damani, learned counsel for the petitioner submits that by an order dated 1st July, 2016, the learned Trial Judge allowed the Chamber Summons No. 144 of 2016 partly. The plaintiff was permitted to carry out amendment in the plaint as proposed in the scheduled of amendment in paragraph 7 onwards only. Mr. Damani submits that in pursuance of such order, however, the plaintiff, has carried out amendment to the plaint by including the paragraphs prior to paragraph 7 in the schedule to the Chamber Summons. He submits that, this clearly amounts to contempt of Court as also tampering with the Court record. He submits that the Contempt Notice of Motion No. 295 of 2017 taken out by the petitioner was, therefore, required to be allowed and some strict action was to be taken against the plaintiff. He submits that the impugned order amounts to failure to exercise jurisdiction.

5. Ms. Amruta Athvle, learned counsel for the petitioner points out that there was some mistake in the numbering of

paragraphs in the schedule to the Chamber Summons. She points out that amendment carried out really from paragraph 7 onwards only and nothing prior to paragraph 7 has been included in the plaint in pursuance of the order dated 1st July, 2016. She submits that the petitioner is bent upon taking some undue advantage of the typographical errors, and on such basis interested in prolonging the hearing in the suit. He submits that taking out the contempt notice of motion, as also the institution of the present petition actually constitutes abuse of the process of the Court.

6. These are the rival contentions, which fall for determination.

7. In this petition, the petitioner has annexed a copy of the Chamber Summons No. 144 of 2016 along with the schedule containing the proposed amendment. This schedule, after paragraph 6 refers to paragraph 6A and 6B (hand-written). There is scoring of the typed paragraph number 7 at internal page page of the schedule.

8. Ms. Athavale, in the course of argument placed on record a copy of the Chamber Summons No. 144 of 2016 alongwith the

schedule annexed to it. In this copy, there was no reference whatsoever to paragraphs 6A and 6B. Since, there were discrepancies between copies submitted by the petitioner and the learned counsel for the respondent No. 1, in order to verify which copy was correct, on an urgent basis, records and proceedings were called for from the learned Trial Judge. This was done precisely because petitioner in this case alleges that courts record have been tampered by the respondent.

9. Upon perusal of records, it is quite clear that the copy furnished by the learned counsel for the respondent No. 1, Ms. Amruta Athavale was the correct copy, and the copy which was submitted to the petitioner with this petition is not the the correct copy. In the records before the learned Trial Court, there are no numberings of paragraphs 6A and 6B. It is, therefore, obvious that the petitioner has not filed a true and correct copy of the chamber summons and the schedule alongwith this petition. The entire care of the petitioner is based upon copies which are totally incorrect.

10. Besides this, if the impugned order is perused and compared with the record, it is very clear that the respondent has

carried out the amendment to the plaint entirely consistent with the leave granted by the learned Trial Court in its order dated 1st July, 2016. Since, there were typographical errors in the paragraph numbers, such errors find reflection even in the amended plaint. However, one-thing is clear that respondent has not introduced any paragraph before paragraph 7 in the schedule of amendment, in the plaint. Thus, as was rightly held by the learned Trial Judge, this was not at all a case of contempt or tampering of Court records.

11. Since, the petitioner has made such serious charge against respondent, the petitioner should have been careful in annexing the true and correct copies of the chamber summons alongwith the schedule while instituting this petition. Since, the petitioner has no qualm of making such serious charges of tampering against respondent No. 1, the petitioner should also realise the consequences of annexing incorrect copies to the petition and on the basis of same, insisting upon favourable orders. In this case, the Court was required to call for records & proceedings from the trial Court on an extremely urgent basis in order to verify the correct position. On verifying copy of the schedule of amendment produced by the Petitioner with the original order, it is quite clear that there is no merit in the case of the

petitioner and, this was an attempt of the petitioner to mislead this Court to secure favourable orders.

12. Accordingly, this petition is dismissed with costs, quantified at Rs. 5,000/-, which the petitioner is directed to pay to the respondent No.1 within a period of two weeks from today. The learned Trial Court to ensure that this cost is indeed paid by the petitioner to the respondent No. 1 within stipulated period. If the costs are not paid, the learned trial Court shall consider taking proper action against the petitioner, particularly, since, the petitioner had no qualm for initiating contempt action against the respondent No. 1 for the reasons, which were entirely frivolous.

13. Rule is discharged. Record and proceedings to be returned to the learned trial Judge immediately.

14. All concerned to act on an authenticated copy of this order.

15. Civil Application No. 2277 of 2018 pending in the petition does not survive, and same is accordingly disposed of.

Sd/-
(M. S. SONAK, J.)