

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1217 OF 2019

M/s. Mulraj Khatau and Sons
Pvt.Ltd.

.. Petitioner

vs.

Nagesh Samar Bahadur Singh and anr.

.. Respondents

Mr. Thorat, Senior Advocate i/b Mr. B.P. Shukla for the
Petitioner

Mr. S.A. Abhyankar i/b Ms Anjali Neel Helekar for
Respondent No.1.

Mr. Santosh P. for Respondent No.2-MCGM.

CORAM : M. S. SONAK, J.

DATE : 20 MARCH 2019.

P.C. :-

1] Heard Mr. Thorat, learned senior advocate for the
petitioner and Mr. Abhyankar, learned counsel for
respondent No.1- plaintiff.

2] The challenge in this petition is to the order dated 17th
November 2018 made by the learned Trial Judge allowing the
Chamber Summons taken out by respondent No.1 for
amendment of the plaint.

3] Mr. Thorat, learned senior advocate for the petitioner,
submits that the impugned order itself records that by grant

of leave to amend the plaint, the nature of the suit has undergone change. He submits that since, the amendment proposes to fundamentally change the nature of suit, such amendment should not be allowed. Mr. Thorat further points out that respondent No.1, i.e., plaintiff in the original suit as well as in the proposed amendment has pleaded that he is the tenant of the petitioner. Mr. Thorat submits that on basis of this pleading, respondent No.1 seeks injunction against the petitioner, who is the landlord of respondent No.1. Mr.Thorat submits that such a suit is not at all maintainable since learned Trial Judge will not have jurisdiction to decide a suit between the landlord and tenant. Mr. Thorat submits that this aspect has not been considered or in any case, not properly considered by the learned Trial Judge and this is an additional ground for setting aside the impugned order.

4] Mr. Abhyankar, learned counsel for respondent No.1, defends the impugned order on the basis of reasoning reflected therein.

5] In the present case, it is necessary to note that the Chamber Summons seeking leave to amend was taken out prior to commencement of the trial. Therefore, the proviso to Order 6 Rule 17 of the CPC was not applicable.

6] From the Schedule which contains the proposed amendment, it cannot be said that there is some fundamental change in the nature of suit. In this case, the suit was initially instituted only against the Municipal Corporation for Greater Mumbai. However, the petitioner claiming to be the landlord/owner of the suit property sought for impleadment and such impleadment was also permitted.

7] Now that the petitioner was impleaded as defendant No.2 in the suit, respondent No.1 has applied for amendment of the plaint to seek *inter alia* some reliefs against the petitioner, who is impleaded as defendant No.2. So construed from this background, it cannot be said that there is any fundamental change in the nature of suit.

8] The issue of jurisdiction, which Mr. Thorat has raised, can always be raised by filing additional written statement to the amended plaint. There are other provisions as well in the CPC, in terms of which, the objections to jurisdiction can always be raised. For that purpose, it is not necessary to interfere with the impugned order and set aside the impugned order by which leave to amend has been granted. At the stage of deciding an application seeking leave to amend the pleadings, the Court is not normally expected to go into the merits of the rival contentions, which would normally arise once leave to amend is granted. Mr. Thorat quite fairly stated that the petitioner would have no objection to amendment and inclusion of prayer clause (be) by which respondent No.1 seeks damages against the petitioner.

9] Therefore, by clarifying that it will be open to the petitioner to raise all permissible objections, including objections as to the jurisdiction of the learned Trial Judge to grant amended prayer clause (bb), the impugned order is not interfered with. It is once again clarified that all objections of the petitioner are specifically kept open.

10] With clarification as aforesaid, this petition is disposed of. There shall be no order as to costs.

11] The interim order granted earlier staying further proceedings before the learned Trial Court is hereby vacated.

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

(M. S. SONAK, J.)