

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

WRIT PETITION NO. 1843 OF 2018

Satyandra Madhavrao Kanchan

... Petitioner

V/s.

Ashok Ramchandra Kanchan & Ors.

... Respondents

Mr. R.A. Naik a/w Ms. Rati Sinhasane I/b Mr. Umesh Mankapure for
the Petitioner.

Mr. Chandrakirti Zende I/b Mr. Jayesh Kocheta for the Respondent.

**CORAM : M.S.SONAK, J.
DATE : 15TH APRIL, 2019**

P.C.:

1. Heard Mr. R.A. Naik instructed by Mr. Umesh Mankapure for the Petitioner and Mr. Chandrakirti Zende for the Respondent.
2. Challenge in this petition is to the order dated 13.12.2017 by which the learned Trial Judge has permitted the Respondent/ Plaintiff to amend the plaint and seek *inter alia* relief of declaration in respect of the Agreement dated 10.07.1980. Even though the suit is originally instituted for injunction simplicitor.
3. Mr. Naik, learned Counsel for the Petitioner submits that by proposed amendment, the fundamental nature of the suit has been altered. He submits that the declaration now applied for, is clearly barred by limitation. He submits that in this circumstances leave to

amend should have been refused.

4. Mr. Zende learned Counsel for the Respondent defends the impugned order on the basis of the reasoning which reflected therein. He submits that this is a case of pre-trial amendment and therefore, the same has to be liberally granted. He, therefore, submits that this petition may be dismissed.

5. According to me, the Respondent/Plaintiff had applied for amendment prior to the commencement of the trial. Taking into consideration, the nature of the amendment which is sought to be incorporated, it cannot be said that the same fundamentally alters the nature of the suit.

6. Insofar as the issue of limitation is concerned, merely because leave to amend has been granted, it does not mean that such issue has been decided against the Petitioner. It is very clear that the issue, if raised, will have to be gone into once, the Petitioner files additional written statement in response to amended plaint and raises such an issue. Even otherwise, the law requires the court to go into the issue of limitation, if, the same arises irrespective of whether same is raised as defence or not. Accordingly, it is very clear that the issue of limitation has been left open.

7. Except for clarification as aforesaid, there is no case made out

to interfere with the impugned order. Accordingly, this petition is dismissed with clarification as aforesaid.

8. The Petitioner is now granted six weeks' time to file additional written statement to the amended plaint.

9. Petition is disposed of with the aforesaid terms. There shall be no order as to costs.

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

(M.S.SONAK, J.)