

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.7692/2018

Vikas Pravinchandra Shaha

... Petitioner

V/s.

Patankar Family Trust & Ors.

... Respondents

Mr.Prashant Bhavake for the Petitioner

Mr. Soni Omprakash for Respondent Nos.1 and 2.

CORAM: K.K. TATED, J.

DATED : JANUARY 14, 2019

P.C. :

1 Heard. By this petition under Article 227 of the Constitution of India the Petitioner challenges the order dated 08.09.2017 passed by the 7th Jt. Civil Judge, Senior Division, Kolhapur below Exhibit- 87 in Regular Civil Suit No. 2018/2012 allowing the Respondent - Plaintiff's Application under Order 6 Rule 17 of the Code of Civil Procedure, 1908 to amend the plaint.

2 In the present proceedings, the Respondent Plaintiff has filed Regular Civil Suit No. 2018/2012 for decree of possession of the suit property and other reliefs. The said suit was filed on behalf of the Trust through one of the Managing Trustees Ramchandra Ajitsingh Patankar. During pendency of the suit, the Petitioner - Defendant made an Application for carrying out amendment in the written statement which was allowed. On the basis of the said amendment in the written statement, the Respondent - Plaintiff made an Application under Order 6 Rule

17 of the Code of Civil Procedure, 1908 to carry out amendment in the plaint to add the present Trustee as Plaintiff No.2 and for consequential amendment, which was allowed by the Trial Court though the trial had begun. Same is objected by the Petitioner – Defendant. Hence, present Writ Petition.

3 The learned counsel for the Petitioner submits that the Trial Court has erred in coming to the conclusion that the Respondent – Plaintiff has made out a case for carrying out the amendment though the trial had begun. He further submits that as per order 6 Rule 17 of the Code of Civil Procedure, 1908, once the trial begins, there is no question of allowing the parties to carry out amendment. He further submits that the Trial Court has erred in relying on the judgment of the apex court in the matter of ***Bikram Singh and Ors. Vs. Ram Baboo and Others AIR 1981 SC 2036*** allowing the Application made by the Respondent under Order 6 Rule 17 of the Code of Civil Procedure, 1908. On the basis of this submission, the learned counsel for the Petitioner submits that the impugned order dated 08.09.2017 is liable to be set aside.

4 On the other hand, the learned counsel for the Respondent – Plaintiff has vehemently opposed the Writ Petition. He further submits that the Trial Court, after considering the documents on record, allowed their Application for carrying out amendment in the plaint. He further submits that by the said amendment, the Plaintiff has brought on record the present Trustee of the Trust and has made the consequential amendment to that effect. Therefore, there is no question of bar under Order 6 Rule 17 of

the Code of Civil Procedure, 1908. Hence, the Writ Petition is liable to be dismissed with costs.

5 It is to be noted that in the present proceedings the suit was filed by the Plaintiff on behalf of the Trust through Managing Trustee. When the Petitioner - Defendant carried out amendment in the written statement, at that time they learnt that it remained on their part to add the present Trustee as the Plaintiff in the suit. Hence, they made the present Application under Order 6 Rule 17 of the Code of Civil Procedure, 1908. It is to be noted that just to remove the formal defect in the plaint, there is no question of bar under Order 6 Rule 17 of the Code of Civil Procedure, 1908. Not only that even the apex court in the matter of *Bikram Singh and Ors.* (supra) has laid down the law to that effect.

6 Considering these facts, I am of the opinion that there is no question of interfering with the well reasoned impugned order dated 08.09.2017 passed by the Trial Court.

7 Hence, the Writ Petition stands rejected.

8 It is made clear that if the Petitioner desires, he may file his additional written statement to the amended plaint with copy to other side on or before 15.02.2019.

(K. K. TATED, J.)