

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.4023 OF 2018

Amar Bharat Construction

.. Petitioner

V/s.

Chandrakant Ramanna Shetty and Ors.

.. Respondents

None for the parties.

CORAM: K.K. TATED, J.

DATED : MARCH 13, 2019

P.C. :

1 Heard. Today the matter is placed on board for speaking to the minutes of order dated 01.03.2019.

2 On page 6 in paragraph 8(c), third line, instead of **30.04.2012** it should be **30.04.2019**.

3 The order dated 01.03.2019 stands corrected accordingly. Rest of the order shall remain as it is.

4 Corrected order reads thus:

“1 Heard.

2 By this petition under Article 227 of the Constitution of India, the Petitioner challenges the order dated 22.12.2017 passed by 4th Joint Civil Judge, Senior Division, Kalyan below

Exhibit-96 in Regular Civil Suit No. 533 of 2012 rejecting defendant no.1's Application for carrying out amendment in written statement dated 10.04.2012.

3 In the present proceedings, Respondent no.1 original plaintiff filed Regular Civil Suit No. 533 of 2012 in the court of Civil Judge, Senior Division, Kalyan for declaration and for injunction with following prayers:

“a) *It be declared that the act on the part of the defendant no.1 of digging out the land towards the western side, adjacent to the said Borgaonkar Complex & thereby purposefully cutting off & removing the two aforesaid PVT (fiber pipes) earlier provided for the drainage of the said complex by the then Builder, i.e. the defendant no.2 & the two aforesaid PVT (fiber) pipes put by the plaintiff parallel along with the already existing said two PVC (fiber) piles at least to the extent of 60 feet approximately & permanently closing all the said four PVC (fiber) pipes by affixing the seal on the face of all the four pipes at the north-west corner of the existing Borgaonkar Shopping Complex (more particularly shown in the rough Map filed along with the Plaint) is illegal & further that the defendant Nos.1 & 2 had no right to do so.*

b) *The defendants may be ordered & directed by way of mandatory injunction to forthwith remove the*

seal affixed by the defendant no.1 in the mouth of all the four pipes of the said drainage line, as stated above & to connect the same to the said main municipal drainage line on the main Station Road (Shivaji Path) by putting new fiber pipe line of the same dimensions & thereafter to not to disturb and / or damage the same.

c) The defendant Nos.1 & 2, their agents, representatives, assignees, transferees & anybody for & on behalf of the defendant Nos.1 & 2 may be restrained by an order of permanent & perpetual injunction from making construction on the said remaining portion of the said land, which is adjacent to the said existing Borgaonkar Complex towards it's west side, whereby the route of the said drainage / sewerage (more particularly shown in the rough Map filed along with the Plaint) will be affected and / or extinguished.

d) It be declared that the defendant No.3 Corporation has no right to sanction the building Plan & grant the construction permission to the defendant Nos.1 & 2 for the said remaining portion of the said land, which is adjacent to the said existing Borgaonkar Complex towards it's west side, whereby the route of the said drainage / sewerage (more particularly show in the rough Map filed along with the Plaint) will be affected and / or extinguished.

e) The defendant No. Corporation may be restrained by an Order of permanent perpetual injunction from sanctioning the building Plan & granting the construction permission to the defendant Nos.1 & 2 for the said remaining portion of the said land, which is adjacent to the said existing Borgoankar Complex towards it's west side, whereby the route of the said drainage / sewerage (more particularly shown in the rough Map filed along with the Plaint) will be affected and / or extinguished.

f) Ad-interim / interim reliefs in terms of prayer Clause 'b', 'c' & 'e' hereinabove may be granted, pending the hearing & final disposal of this Suit.

g) The cost of this Suit may be awarded to the plaintiff from the defendants;

h) Such other reliefs, as the Hon'ble Court deems fit & proper, may also be granted in favour of the plaintiff in view of the facts & circumstances of the case."

4 In the said Suit, Petitioner defendant no.1 filed their written statement on 10.04.2012. Thereafter Petitioner filed Application for amendment in written statement under Order VI Rule 17 read with Rule 151 of the Code of Civil Procedure, 1908 on 04.02.2016, on the basis of subsequent development, that

Respondent no.1 original plaintiff filed Writ Petition 2787 of 2013 before the High Court at Bombay on 04.02.2014. The said application for amendment of written statement was rejected by the Trial Court by impugned order dated 22.12.2017 stating that there was delay on the part of Petitioner to make Application for amendment. Not only that, Trial Court observed in paragraph 11 of the impugned order that there is no question of bringing on record subsequent events.

5 The learned counsel for the Petitioner submits that the issue involved in Writ Petition No.2787 of 2013 filed by the Plaintiff bears some weight in the present Regular Civil Suit No. 533 of 2012 and therefore , it is necessary to bring these facts on record. These facts were not considered by the Trial Court at the time of passing impugned order dated 22.12.2017. He submits that in the interest of Justice, this Hon'ble Court be pleased to allow the present Writ Petition and permit the Petitioner to carry out appropriate amendment in their written statement as per application below Exhibit-96. He submits that if Writ Petition is not allowed, irreparable loss will be caused to them.

6 The learned counsel for the Respondent no.1 original plaintiff vehemently opposed the present Writ Petition. He submits that Writ Petition was filed in 2013. Petitioner original defendant no.1 filed application below Exhibit-96 for amendment in the written statement on 04.02.2016 i.e. after more than 3 years delay which is not explained by the Petitioner. Hence, there is no question of permitting Petitioner to carry out amendment in

written statement. Therefore, Writ Petition is required to be dismissed with costs.

7 Heard.

8 It is to be noted that in the present proceedings, Petitioner original defendant no.1 wants to bring on record subsequent development in respect of matter i.e. filing of Writ Petition No.2787 of 2013 by the Respondent no.1 original plaintiff. Bare reading of the application below Exhibit-96 and particularly paragraph 3 shows that Petitioner original defendant no.1 wants to place on record the facts of the Writ Petition No.2787 of 2013.

9 Considering these facts, I am of the opinion that the view taken by the Trial Court at the time of rejecting Petitioner's Application is not correct. Hence, following order is passed:

a Order dated 22.12.2017 passed by 4th Joint Civil Judge, Senior Division, Kalyan below Exhibit-96 in Regular Civil Suit No. 533 of 2012 is set aside.

b Application filed by the Petitioner original defendant no.1 below Exhibit-96 for carrying out amendment in written statement dated 10.04.2012 is allowed.

c Petitioner original defendant no.1 to carry out appropriate amendment in written statement dated 10.04.2012 as per Application below Exhibit-96 on or before **30.04.2019** with copy to other side.

- d Writ Petition stands disposed of accordingly.
- e No order as to costs.”

(K. K. TATED, J.)