

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

WRIT PETITION NO. 9853 OF 2014

1. Rachana Consultants through its	]	
Proprietor Shir Ramgopal P. Chandak	]	
Age 45 years, Occ.: Business,	]	
R/at 205 Shaniwar Peth, Paraj	]	
Apartment, Pune – 411030	]	.. Petitioner
Vs.		
1. Larsen & Toubro Ltd.	]	
Reg. Address at : L & R House,	]	
Ballard estate, P.B. No. 278,	]	
Mumbai 400 001.	]	
	]	
2. Ultra Tech Cement Ltd.	]	
Office at : Satyam Estate, 3 rd floor,	]	
Cardinal Gracious Road, Chakala,	]	
Andheri (East), Mumbai – 400099.	]	
	]	
3. Shri Ashok Shamrao Jadhav	]	
Adult, Occ.: Business,	]	
R/at 209, A1/1b, Tarabai Park E,	]	
Behind Income Tax Office, Kolhapur	]	
	]	
4. Shri Chandrakant Shamrao Jadhav	]	
Adult, Occ. Business,	]	
R/at 209, A1/1B, Tarabai Park E,	]	
Behind Income Tax Office,	]	
Kolhapur	]	
	]	
5. National Securities Depository Ltd.	]	
4 th Floor, A Wing, Trade World,	]	
Senapati Bapat Marg, Parel,	]	
Mumbai 400 013.	]	.. Respondents

Shri S.R. Nargolkar a/w. Mr.Ketan Joshi I/b Ms.Meenakshi Sakhare
Advocates for petitioner.

Shri V.S. Gokhale, Advocate for respondent Nos.3 and 4.

CORAM : N.J. JAMADAR, J.
DATE : 22ND MARCH 2019

JUDGMENT

1. Rule. Rule made returnable forthwith. With the consent of the counsels for the parties, heard finally.

2. The challenge in this petition is to an order passed by the learned Joint Civil Judge, Senior Division, Pune dated 4th March 2014 on an application (Exh.63), in Regular Civil Suit No.1372 of 2006, whereby the prayer of the petitioner-plaintiff to adduce evidence by way of additional affidavit of further examination in chief came to be rejected.

3. The brief facts can be stated as under :-

The plaintiff was holding shares of respondent No.1-Company. Shares were transferred by the respondent Nos.3 and 4 in favour of the plaintiff for a valuable consideration. In the meanwhile, pursuant to amalgamation of respondent No.1 and incorporation of respondent No.2, fresh share certificates came to be issued by respondent No.2-company. Those fresh share certificates ought to have been issued in

the name of the plaintiff. However, the respondent Nos.3 and 4, despite having sold the shares to the plaintiff, raised a false dispute about the title to those shares. Hence, the plaintiff instituted the suit for declaration of title to those shares and the consequential relief of injunction against the defendants.

4. The plaintiff filed his affidavit of examination in chief. In the meanwhile, it transpired that the respondent No.1 had declared bonus in the years 2006, 2008 and 2013 and, thus, the plaintiff's shareholding rose to 750 shares. Therefore, the plaintiff preferred an application seeking permission to file additional affidavit of examination in chief to bring the said fact on record of the Court and lead evidence in support thereof. The defendant Nos.3 and 4 resisted the said application.

5. The learned Civil Judge was persuaded to reject the application for the reason that there was no pleading in the plaint in respect of the alleged allotment of bonus shares and increase in the shareholding of the plaintiff to 750 shares; the value of the suit claim would considerably increase if the affirmation in the additional affidavit were to be considered and the plaintiff cannot be permitted

to bring on record a fact by way of additional evidence for which there was no foundation in pleadings.

6. The learned counsel for the petitioner Shri Nargolkar strenuously urged that the aforesaid approach of the learned Civil Judge is not justifiable. Taking me through the plaint, especially the prayers thereof, an earnest endeavor was made to demonstrate that the plaintiff had, in fact, adverted to the possibility of allotment of bonus shares and had, therefore, prayed for withholding of the bonus shares, which may be issued in connection with the suit shares. It was further urged that admissibility of the evidence was an altogether different matter and the learned Civil Judge committed an error in refusing to allow the petitioner to file an additional affidavit of further examination in chief.

7. In opposition to this Shri Gokhale, the learned counsel for respondent No.3 and 4, would support the impugned order. It was fairly submitted that proper course for the petitioner was to suitably amend the plaint and thereafter lead the evidence in support of the additional claim.

8. Indisputably, the allotment of bonus shares was not subsequent to the filing of the affidavit of examination in chief. From the own showing of the petitioner, those bonus shares were allotted in the years 2006, 2008, 2013. Thus, said fact of allotment of bonus shares cannot be said to be an event subsequent to the filing of affidavit of examination in chief.

9. Viewed from this standpoint, the reasons assigned by the learned Civil Judge for declining the permission to file additional affidavit of examination in chief appear to be justifiable. It is trite that a party cannot be permitted to lead evidence beyond pleadings. Bare minimum facts necessary to sustain the claim of allotment of bonus shares and the rights emanating therefrom were required to be pleaded so as to facilitate the leading of evidence in support thereof. The learned Civil Judge rightly adverted to the possibility of increase in the value of the suit claim. This aspect was significant in the context of the pecuniary limit of jurisdiction of the Court of Civil Judge, Junior Division.

10. The learned counsel for the petitioner was within his rights to submit that the right to the bonus shares emanated from the suit

shares, and, therefore, a new case was not being pressed into service by the plaintiff-petitioner. However, it does not imply that the said factual aspect of the allotment of bonus shares and rights thereto could be adjudicated without there being appropriate foundation in pleadings.

11. Faced with the aforesaid situation, it was submitted on behalf of the petitioner that now, in fact, an application for amendment of the plaint has already been filed.

12. In this view of the matter, I am inclined to hold that, it would be appropriate to grant liberty to the petitioner-plaintiff to file an appropriate application for amendment, if not already filed, and pursue such application, if already filed, and, thereafter, depending on the fate of such application, revive the prayer to lead further evidence. With the aforesaid liberty, the petition stands disposed of.

13. Rule is made absolute in the aforesaid terms.

14. In these circumstances, there shall be no order as to costs.

[N. J. JAMADAR, J.]