

Urmila Ingale

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 7719 OF 2019

Deshbandu K.Ohri and anr.	.. Petitioners
Vs.	
Rajesh Kasturilal Ohri and ors.	.. Respondents

Mr.Chetan Patil, for the Petitioners.
Ms.Usha Srivastava i/b Ronak Shah & Co., for the Respondent
No.1

CORAM : M.S.KARNIK, J.

DATE :05th SEPTEMBER 2019

P.C. :

. Heard learned Counsel for the petitioners.

2. By this Petition filed under Article 227 of the Constitution of India, petitioners are challenging the order passed below Exhibit 132 allowing the application for amendment of the plaint under Order VI Rule 17 of C.P.C.

3. The petitioners are the original defendants. The

respondents – plaintiffs had filed the Suit for dissolution and accounts of the partnership firm. During the pendency of the Suit, the defendant- Mrs. Satya Kasturilal Ohri died on 07/08/2009. The plaintiffs pursuant to order dated 10/09/2009, brought legal heirs of the defendant on record.

4. The application Exhibit 132 for amendment was filed by the plaintiff on 10/10/2018. The trial Court allowed the application. It is the contention of petitioners that the application is very belated.

5. Learned Counsel for the petitioners relied upon the decisions of this Court in the case of **Kisan Narayan Mavkar Vs. Ravindra Anandrao Pantsachiv and ors. dated 13/07/2015 in Writ Petition No. 4536 of 2015** and the decision in the case of **Sasa Detergent Division Vs. Shri Damodar S.Mudliyar and ors. 2012 (6) ALL MR 268** to contend that the plaintiffs have not given any reason for delay in filing the application. Learned Counsel for the petitioners would submit that as a general rule,

the Court should decline amendments if a fresh Suit on the amended claim would be barred by limitation on the date of the application. Learned Counsel would submit that even the trial Court while allowing application has given no reason whatsoever as to why the amendment application is allowed after such inordinate delay. Learned Counsel would submit that the amendment changes the nature of the Suit.

6. Learned Counsel for the respondents on the other hand supported the impugned order.

7. I have gone through the order passed by the trial Court. The Suit is filed for dissolution and accounts of the partnership firm. No doubt, the defendant Mrs. Satya Kasturilal Ohri died on 07/08/2009 and the application for amendment was made only in October 2018. However, amendment which is sought is merely a consequential amendment which is in terms of clause 16 of the partnership deed dated 02/07/1986 which reads as under :

“16. Upon the retirement and/or death, and/or *insolvency or expulsion of any of the partner, the retiring partner and/or* legal heirs or administrative shall not be entitled to any of the tangible or intangible assets of the firm, good will or tenancy rights of the firm, and the retiring partner and/or legal heirs and/or legal administrative shall only be entitled to his balance lying to his/her credit into the books of the firm.”

8. The plaintiff had after the death of defendant - Mrs. Satya Kasturilal Ohri brought her legal heirs on record. However, the consequence of death of one of the partners as per clause 16 was not stated and this remained to be brought on record. The proposed amendment is only a consequential pleading which is sought to be brought on record in view of demise of Mrs. Satya Kasturilal Ohri. This will in no manner prejudice the petitioners as the amendment is in terms of clause 16 of the partnership deed which is already on record.

9. Insofar as the contention of the learned Counsel for the petitioners that the application for amendment is hopelessly belated, I find that the amendment which is sought is only a

consequential amendment as to the effect of operation of clause 16 of the partnership deed upon demise of the partner. In paragraph 5, 6, 7, 8, 9, 10, 11, 12 and 13 of the application Exhibit 132 reasons are stated explaining the delay caused in filing the application for amendment. This is not a case where amendment is sought in a time barred claim. Moreover, only issues have been framed and evidence of the parties is yet to be recorded.

10. In these circumstances, if the trial Court has allowed the application for amendment for the view that the amendment is only to bring on record legitimate consequential pleadings by the plaintiffs after the subsequent event i.e. on demise of the defendant who is one of the partner of the partnership firm, I see no reason to interfere with the view taken by the trial Court. The trial Court observed that the proposed amendment is necessary for the purpose of determining the real question in controversy between the parties. Needless to mention that the petitioners will be always at liberty to file additional written

statement to the amended plaint. The Petition is therefore rejected with no order as to costs.

(M.S.KARNIK, J.)