

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.6768 OF 2016

Ashok Tulshiram Dhoom and Ors. ...Petitioners
vs.
Pandurang Kisan Pawar and Ors. ...Respondents

Mr. Girish Agrawal, for the Petitioners
None for the Respondents

CORAM : M. S. SONAK, J.

DATE : APRIL 10, 2019

JUDGMENT :

- . Heard Mr. Agrawal, the learned counsel for the Petitioners.
2. On 4th December, 2018 this Court made the following order:

1 Heard.

2 Both the Respondents are duly served. No one appeared on behalf of them when the matter was called out.

3 Considering these facts, following order is passed:

a) Registry is directed to issue fresh notice before admission to the Respondent, returnable on 11.02.2019 stating that if time permits, matter will be decided finally at the stage of admission itself.

b) In addition to usual mode of service, petitioner is permitted to serve Respondents along with entire proceedings by private notice either by registered post A.D. and/or by hand delivery and file Affidavit of Service to that effect on or before 1.2.2019.

c) Stand over to 11.02.2019.

3. Mr. Agrawal states that service is complete and even affidavit of service has been filed. Accordingly, rule. Rule is made returnable

forthwith since by the aforesaid order dated 4th December, 2018 it was made clear that this Petition will be finally decided at the stage of admission itself.

4. In this case, the Petitioners – Plaintiff were granted leave to amend the Plaint by order dated 16th February, 2015 by the learned trial Judge. The amendment was to be carried out within a period of fourteen days subject to payment of costs. Costs were to be paid on 2nd March, 2015 however, no amendment was actually carried out. On 14th July, 2015 once this was realized, the application was taken out at Exhibit 68 seeking for extension. By impugned order dated 9th September, 2015 this application came to be rejected. The Petitioner then took out a Review Petition (Exhibit 70) which came to be rejected by an order 15th February, 2016. This Petition is therefore directed against the orders dated 9th September, 2015 and 15th February, 2016.

5. Though the Petitioners have been negligent, it cannot be said that they should be deprived of an opportunity to carry out amendment to their Plaint, particularly since by order dated 16th February, 2015 leave to amend the Plaint had already been

granted. Ultimately, in such procedural matters, the Court has to be considerate to the parties. All this has no doubt, delayed the proceeding in the suit. For this the Petitioners would have been required to pay costs.

6. Accordingly, the aforesaid two orders dated 9th September, 2015 and 15th February, 2016 are set aside and leave is granted to the Petitioners to carry out the amendment to the Plaint as permitted by order dated 16th February, 2015 within a period of two weeks from the date this order is uploaded on the website subject to costs of Rs. 5,000/- to the Defendants in the suit.

7. Costs can be directly paid or deposited before the trial Court within a period of one week from the date this order is uploaded on the website. Upon deposit, the learned trial Judge to permit the Defendants to withdraw such costs unconditionally.

8. Rule is made absolute in the aforesaid terms.

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

(M. S. SONAK, J.)