

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.8840 of 2017

Shri. Balaji Ambadas Sonar

...Petitioner

vs.

Smt. Shilabai Shantaram Kulkarni

...Respondent

Mr. Rajan S. Pawar for the Petitioner

Ms Tanvi Sangle I/b. Mr. Pravartak Pathak for R. No. 1 & 3.

CORAM : M. S. SONAK, J.

DATE : 24th April, 2019

ORAL JUDGMENT :-

- 1] Heard Mr. Rajan S. Pawar for the petitioner and Mr.Pravartak Pathak for respondent.
- 2] Rule. Rule is made returnable forthwith, with the consent of and at the request of Learned Counsel for the parties.
- 3] The challenge in this petition is to the order dated 3rd April 2017 by which the Learned Trial Judge has rejected the petitioner's application at Exh.24 seeking leave to amend the plaint.
- 4] The record indicates that, the application Exh.24 was made after the commencement of the trial. The only explanation

furnished is that while preparing an affidavit in lieu of examination in chief, it was realized that, there is typographical error in the plaint. If such error was deleted, at the stage of preparation of affidavit in lieu of examination in chief, nothing prevented the petitioner from seeking amendment prior to filing an affidavit in lieu of examination in chief.

5] In this case leave to amend was sought soon after the filing of an affidavit in lieu of examination in chief. The amendment only seeks to correct or rather substitute reference to the word “defendant” with the word “plaintiff” in paragraph 4(C) of the plaint. It does appear that the reference to word “defendant” in para 4(C) of the plaint was only a typographical error in the plaint. If the plaint is read in the entirety then this position is quite evident.

6] Mr. Pathak, Learned Counsel for the Respondent, however submits that there is absolutely no explanation on the aspect of due diligence. He relies on J Samuel & Ors. V/s Gattu Mahesh & ors. 2012, (2) SCC 300, to submit that in the absence of due diligence even leave to correct the typographical mistake ought not to be allowed. Further Mr. Pathak submits that on the basis of the averement in paragraph 4(C) of the plaint, the respondent has

already filed written statement. If any amendment is allowed now, then, it would amount to permitting the petitioner to change the nature of the case.

7] In the facts and circumstances of the present case though something can be said on the aspect of due diligence, it cannot be said that, the petitioner was completely negligent in the matter.

8] In the case of J. Samuel (Supra) leave to amend was applied on after the arguments were completed and the matter was posted for the judgment. Besides in the said case, the Hon'ble Supreme Court has held that in deserving cases, the court can allow delayed amendment by compensating to the opposite party by awarding costs.

9] Taking into consideration the nature of the amendment, it can never be said that the plaintiff is changing the nature of the suit. In fact, if the plaint is read in the entirety, it is quite clear that the reference to “defendant” in paragraph 4(C) of the plaint was an inadvertent typographical error.

10] For the aforesaid reasons, the impugned order dated 03-04-2017 is set aside. The petitioner's application at Exh.24 is allowed. This is however subject to the petitioner paying cost of Rs. 5,000/- to the respondent or depositing the said amount before the Trial

Court within four weeks from today. If the costs are paid or deposited within four weeks from today, then petitioner to carryout amendment within period of two weeks thereafter.

11] However, if costs are not paid or deposited within four weeks from today then the petition to stand dismissed with cost of Rs. 5,000/-.

12] If the costs are deposited within four weeks from today, then the respondent is granted liberty to withdraw the same unconditionally.

13] The respondent is also granted liberty to file additional written statement in response to the amended plaint within a period of two weeks from the date of service of copy of the amended plaint.

14] Rule is made absolute in the aforesaid terms.

15] All concerned to act upon the basis of an authenticated copy of this order.

(M. S. SONAK, J.)