

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NNO.613 OF 2018
IN
CIVIL REVISION APPLICATION NO.16 OF 2010

Padma Venkatesh Naidu and Anr. ...Applicants
vs.
Venkatesh Muthalgar Subdiah and Ors. ...Respondents

Mr. Venkatesh Naidu, the Applicant in person.
Mr. S.S. Pandey I/b. Mr. V.B. Pandey, for the Respondents

CORAM : M. S. SONAK, J.

DATE : APRIL 02, 2019

P.C.:

1. Heard Mr. Venkatesh Naidu, the constituted attorney for the Applicant.
2. Mr. Naidu seeks extension of time to file application for amendment of the Plaint in terms of the liberty granted to the Applicants by Clause 1 (B) of the order dated 8th July, 2016.
3. Mr. Naidu candidly states that he is not a legally trained person. He submits that on account of absence of the legal advise, the application was made in the past before the trial Court that the Applicants do not wish to exercise the discretion of filing the application seeking the amendment of the Plaint. He further submits that such application for amendment is necessary

particularly now when that the Respondents have created third party rights. He submits that whatever he has done in the past for the Applicants whom he represent, may be forgiven and one chance to file application for amendment of the Complaint be given to him.

4. Mr. Pandey, learned counsel for the Respondents opposes the grant of any extension of time. He submits that the delay is unexplained and in the past the Applicants had waived their rights. He points out that severe prejudice will cause to the Respondents as of now almost three years have been passed. He submits that even the rights of the Respondents under Section 9A of the Code of Civil Procedure is taken away. For all these reasons, the application seeking extension of time may be dismissed.

5. Upon due consideration, the rival contentions and looking to the record of the matter, it is obvious that the Applicants have not been properly advised in the matter. Mr. Naidu admitted that he is not a legally trained person but claims that he likes legal proceeding. Obviously, the Applicants are advised by Mr. Naidu, which advice, unfortunately led the Applicants in this predicament. However, despite this, it cannot be said that there are any *malafide* as such, involved in the conduct of the Applicants. The Applicants

only appeared to be ill-advised in the matter. Further, since Mr. Naidu is appearing as Power of Attorney on behalf of the Applicants i.e. his wife and sister in law, possibility that the matter is not predicated in considering to the option that are open to the Applicants and therefore the possibility that this was mentioned before the trial Judge that the Applicants do not wish to avail the liberty granted to them. Mr. Naidu, however assured this Court that such things will not repeated. He has requested that his earlier acts may be forgiven and one final opportunity may be given to him.

6. No doubt, prejudice bound to occasion to the Respondents but the prejudice is, as such, as can be compensated by some costs.

7. Accordingly, subject to payment of cost of Rs. 10,000/- within a period of six weeks from today, the extension is granted to the Applicants to file application for amendment in terms of Clause 1(B) of the order dated 8th July, 2016.

8. The costs may be deposited before the trial Court within six weeks from today. If such costs are indeed deposited, then the Applicants are at liberty to file application seeking amendment of Plaint. The Respondents are at liberty to file their response within

two weeks thereafter.

9 The trial Court to dispose of the application if filed, as expeditiously as possible, and in any case within a period of three months from the date it is filed.

10. However, the costs, as aforesaid, if not deposited within six weeks from today, then this application shall be deemed to have been dismissed without any further reference to this Court.

11. The Civil Application is disposed of in the aforesaid terms.

12. Needless to add that any contentions of all parties are left open for consideration by the trial Court. This was in fact also clarified in the order dated 8th July, 2016.

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

(M. S. SONAK, J.)