

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.10248 OF 2017

M/s. Mangaldas and Company ...Petitioner
vs.
M/s. Mahalaxmi Marble and Mieral Co. & Ors. ...Respondents

Mr. Kunal Bhange, for the Petitioner
Mr. Chandrakant Chavan, for Respondent No. 3.

CORAM : R. G. KETKAR, J.

DATE : JULY 29, 2019

P.C.:

. Heard Mr. Kunal Bhange, learned counsel for the Petitioner and Mr. Chandrakant Chavan, learned counsel for Respondent No. 3 at length.

2. By this Petition under Article 227 of the Constitution of India, the Petitioner, hereinafter referred to as “decree holder” have challenged the order dated 5th May, 2017 passed by Small Causes Court at Mumbai below Exhibit 8 in Obstructionist Notice No. 58 of 2015. By that order Respondent No. 3/Obstructionist filed application seeking amendment in his affidavit in reply dated 9th April, 2015.

3. The decree holder has taken out Obstructionist Notice No. 58 of 2015 as the Respondent No. 3 obstructed execution of the decree. Respondent No. 3 filed reply dated 9th April, 2015 to the obstructionist notice. The learned trial Judge has framed issues on 5th March, 2016. At this stage, Respondent No. 3 filed application (Exhibit 8) for amending the reply dated 9th April, 2015 on the ground that reply was filed hurriedly and the additional plea as regards the executability of the decree was not raised. The decree holder opposed the application. By the impugned order, learned trial Judge has allowed the application and permitted to carry out the amendment as per schedule annexed to the application. Mr. Bhange submitted that impugned order suffers from several errors apparent on the face of record. The amendment should not have been allowed.

4. For the reasons recorded in paragraph Nos. 11 to 13, I do not find that the learned trial Judge has committed any error for passing the impugned order. Hence, the Petition fails and the same is dismissed.

5. It is however made clear that where a decree is appealed

from, any error, defect or irregularity in the impugned order, affecting the decision of the case, may be set forth as ground of objection in the memorandum of appeal as contemplated by section 105(1) OF Code of Civil Procedure.

6. Liberty is reserved to decree holder to file application for disposal of obstructionist proceeding in a time bound manner. If such application is made, the Executing Court will pass appropriate order.

(R.G. KETKAR, J.)