

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION

**WRIT PETITION No.8853 OF 2012**

Arunkumar S. Upadhyay ... Petitioner  
Vs.  
Smt. Kashubai M. Patil & Ors. ... Respondents

Mr. Vikram Chavan a/w Jatin Sahai, for the Petitioner  
Mr. Sachin Pawar, for the Respondent No. 12.

**CORAM : M. S. SONAK, J.**

**DATE : MARCH 14, 2019**

**ORAL JUDGMENT :**

1. Heard Mr. Vikram Chavan, the learned counsel for the petitioner and Mr. Sachin Pawar, learned counsel for respondent No.12, the contesting respondent.

2. Mr. Pawar learned counsel for the respondent states that respondent Nos. 1 to 11 and 13 are formal parties / respondents to this petition and their presence is not required for dismissal of the present petition. He submits that the amendment which was proposed by the petitioner to the plaint was, in fact, opposed by the respondent No.12. Besides that, the other respondents in this case are served.

3. Rule. Rule is made returnable forthwith. Learned

counsel Mr. Sachin Pawar waives notice for Respondent No. 12. By consent, petition is taken up for final hearing.

4. The challenge in this petition is to the order dated 10/7/2012 by which the learned Trial Judge has partly rejected the application for leave to amend, taken out by the petitioner.

5. The reasoning for part rejection of the application seeking leave to amend is contained in paragraph 7 of the impugned order which reads thus :

“7. Now coming to first point of amendment i.e. “obtaining/tracing out” crucial documents, at the outset it is worthwhile to mention here that the plaintiff has not stated what document he found out. Why I felt such thing is necessary, is for the fact that as per provision of Rule 14, O. 7 of the C.P.C. it is incumbent on the plaintiff to file all the documents which he sues upon or relies upon and which are in his possession and power and if any such documents are not in possession or power of the plaintiff, he shall, state in whose possession or power it is. In addition to this, as per O. 13 of the C.P.C., original documents are to be filed before the settlement of issues. If this is the position then it is expected by the plaintiff to mention the nature of document and how the document, which

he now claimed to be found is document of reliance or support. He simply mentioned that “crucial documents” are found out. But that by itself doesn't give any clue to the court to assess whether the proposed amendment on the basis of said document need to be permitted and particularly, in absence of anything in his application about nature of amendment. No doubt, in plaintiff has given schedule of amendment, where from it is seen that he wants to add some 8 to 9 paragraphs in pleading. But again, it would be asking to Court to go through the proposed amendment and then came to conclusion whether amendment is necessary or not on basis of certain document which were not in possession/ or trace out by the plaintiff. **By observing this thing I appear to be some what too technical and trying to avoid labour. But in fact even from cursory look of proposed amendment,** it can not gathered on basis of what document the proposed amendments are requested for.

6. The bold portion, as foresaid, is really the reason for part rejection for the application seeking leave to amend.

7. The aforesaid reasoning, is ex facie unsustainable. This cannot be the ground for rejecting leave to amend. This is more particularly because, this was the case of pre trial amendment.

8. Mr. Pawar, learned counsel for the respondent No.12, however, submits that after leave to amend is granted, the same will amount to change in the nature of the suit. He submits that the plaintiff is not entitled to change the complete nature of the suit. He, therefore, submits that the impugned order may not be interfered.

9. Upon due consideration of the aforesaid submission, it cannot be said that the proposed amendment if allowed, will fundamentally alter the nature of the suit, which is suit for specific performance, and the nature of the suit, would really remain the same.

10. For all the aforesaid reasons, the impugned order, to the extent, the same partly rejects leave to amend is hereby set aside. The petitioners application at Exhibit 28 in special Civil Suit No. 853 of 2010 is allowed in its entirety. However, the petitioner, will have to pay the costs to the respondent No.12, the contesting respondent, which are quantified at Rs.15,000/-.

11. The petitioner is granted leave to carry out amendment within four weeks from today, provided the petitioner, either pays

or deposits costs of Rs.15,000/- within the said period of four weeks. If the costs are deposited before the learned Trial Court, within four weeks, then the respondent No.12 herein, will be at liberty to withdraw the same unconditionally.

12. The petitioner to furnish copy of the amended plaint to all the defendants. The defendants, in case they desire to file an additional written statement in response to the amended plaint, then they are granted liberty to do so within period of six weeks from the service of amended copy of the plaint on them.

13. The rule is made absolute to the aforesaid extent.

14. All concerned to act as on authenticated copy of the order.

15. Since, the suit is pending since 2010, the learned trial Judge is directed to dispose the said suit as expeditiously as possible.

Sd/-  
**(M. S. SONAK, J.)**