

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 12025 OF 2017

Shri Abhaykumar Bansilal Mutha ... Petitioner

Vs.

Shri Atul Vallabh Benke & ors. ... Respondents

Mr. Sagar Kursija i/b. T. D. Deshmukh for Petitioner.

Ms. Manjiri Sharad Parasnis for Respondent Nos. 1 to 4.

CORAM : N. J. JAMADAR, J.

DATED : 14th OCTOBER, 2019

P. C. :

. Heard the learned counsel for the petitioner.

2. The challenge in this petition is to an order dated 29.07.2017 passed by the Learned Civil Judge, Senior Division, Khed – Rajgurunagar on an application (Exhibit-125) in Special Civil Suit No. 493 of 2014 whereby the Learned Judge rejected the application of the defendant No.2 - petitioner for framing additional issues as regards maintainability of the suit for want

of notice u/s. 80 of the Code of Civil Procedure, jurisdiction of the Court and proper valuation of the suit claim.

3. The basis of the application for framing of additional issues was the additional pleadings incorporated by way of amendment of the written statement. By the said amendment, the defendant No.2 was permitted to insert para No. 5A in the written statement. The defence sought to be raised in the said paragraph was that the determination of the price of the standing structure on the suit land, by mutual consultation, was an essential term of the agreement, and the plaintiff had instituted the suit without adhering to the said stipulation and, therefore, the suit was liable to be dismissed on that count alone.

4. In the aforesaid backdrop, the Learned Judge was of the view that the defendant No.2's application for framing of additional issues was not in accordant with the amended written statement as the defendant had not introduced any new fact by way of amended written statement.

5. The learned counsel for the petitioner urged that the aforesaid view of the Learned Judge is not sustainable. An endeavour was made to place reliance on the order dated 19.09.2016 passed by this Court in Writ Petition (St.) No. 25509 of 2016 whereby while negating the challenge to the non framing of the additional issues in the very same suit, at the instance of defendant No.3, this Court has observed that the defendant No.3 is not precluded from raising the contentions that are available as regards the subject matter of issues, sought to be framed. A similar order may also be passed in this petition, urged the learned counsel for the petitioner.

6. The aforesaid submission losses sight of the fact that the very substratum of the application for framing additional issues was the defence raised in the amended written statement of defendant No.2. It is interesting to note that the proposed issues as at (Exhibit-L to the petition), are simply not borne out by the said amendment in the written statement. In this view of

the matter, the Learned Civil Judge was well within his rights in observing that the additional issues, which were sought to be framed, were not warranted by the pleadings. Thus, the impugned order does not warrant any interference.

7. Needless to mention that the parties are entitled to make submissions before the Court on the points in respect of which specific issues have not been framed, if they are otherwise entitled to urge those points.

8. With the aforesaid observations, the petition stands dismissed.

(N. J. JAMADAR, J.)