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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.6173 OF 2016

M/s. CTR Manufacturing Industries	..Petitioner.
V/s.	
M/s. M.R.Engineers	..Respondent.

Mr.A.V.Anturkar, Senior Advocate i/b. Tanaji Mhatugade for the petitioner.

Mr.Abhay L.Patki for respondent Nos.1A, 1B & 1C.

CORAM : NITIN W. SAMBRE, J.

DATE : OCTOBER 7, 2019

P.C. :-

Heard Mr.Anturkar, learned senior counsel for the petitioner and Mr.Patki, learned counsel for the respondents.

2. This is a petition by the original defendant, who suffered a money decree vide judgment and order dated October 7, 2002 and filed Civil Appeal which is pending before the District Judge, Pune.

3. The petitioner-defendant in the appeal is challenging money decree, invoked the provisions of Order 6 Rule 17 of the Code of Civil Procedure ('the Code' for short) seeking amendment to the written statement Exhibit-16, which came to be rejected vide the impugned order dated October 3, 2015.

4. His submissions are, the nature of pleading in the written statement Exhibit-18 itself demonstrate that basis for taking out application for amendment. The petitioner-defendant submits that he intends to explain the pleadings in more details. Therefore, the amendment does not change the nature of the defence which is already raised.

5. Drawing support from the judgment of the Apex Court in the case of *State Bank of Hyderabad V/s. Town Municipal Council¹*, he would urge that the amended provision of the CPC is not attracted, as this case is decided prior to the amendment to the aforesaid provision.

6. As such, he submits that the amendment needs to be allowed in the interest of justice, if required, by putting the petitioner to certain conditions.

7. Learned counsel for the respondent-plaintiff defends the impugned order and submits that no interference is warranted.

8. Considered rival submissions.

9. The fact remains that the suit came to be decreed against the petitioner-defendant on October 7, 2002 and application Exhibit-16 came to be moved by the petitioner on September 11, 2015 i.e. almost after a period of 14 years. The only explanation coming forward for moving the application

1 (2007) 1 Supreme Court Cases 765

Exhibit-16 at such a belated stage is, the appeal was pending before this Court and in view of change in pecuniary jurisdiction, the same was transferred in 2010 to the learned District Judge.

10. This Court cannot be oblivious to the fact that the petitioner-defendant has also led evidence of which he intends to give clarification through the amendment in question as is claimed.

11. The Appellate Court will depend on the existing pleadings based on which evidence was lead by the respective parties. The Appeal Court is required to restrict itself while appreciating the pleadings on record.

12. In the aforesaid backdrop, the claim that the amendment needs to be granted, particularly when it does not change the nature of the suit and the same is explanatory in nature, does not warrant any consideration for causing interference in the impugned order. In the wake of the aforesaid observations, I am informed that the petitioner-defendant, who has suffered money decree, has already deposited the decretal amount, of which part amount is already received.

13. That being so, no interference is warranted. The petition is dismissed.

(NITIN W. SAMBRE, J.)