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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.4213 OF 2015

Laxman Balwant Chougule

..Petitioner.

V/s.

Maruti Shankar Yadav

..Respondent.

Mr.Akshay Pai I/b. Pradeep D. Dalvi for the petitioner.

Mr.Amit B.Borkar for the respondent.

CORAM : M.S.SONAK, J.

DATE : APRIL 12, 2019

ORAL JUDGMENT

Heard Mr.Akshay Pai, learned counsel for the petitioner and Mr.Borkar, learned counsel for the respondent.

2. Rule. Rule made returnable forthwith with the consent and at the request of the parties.

3. Challenge in the petition is to the order dated November 17, 2014 by which the learned Appeal Court has permitted the respondent herein (original defendant) to amend the written statement during the pendency of the appeal.

4. Mr.Pai, learned counsel for the petitioner submits that there is absolutely no justification to grant leave to the respondent to amend the written statement during the pendency of the appeal. He

points out that by way of amendment, totally inconsistent and mutually destructive plea has been permitted to be taken.

5. Mr.Borkar, learned counsel for the respondent submits that the defendant has a right to take an alternate plea and that is precisely what has been done in the present case. He points out that in the written statement a plea was already taken and by way of an amendment, the plea is made. He points out that this was a suit instituted prior to the year 2002 and, therefore, even the proviso under Order 6 Rule 17 of the Code of Civil Procedure ('the CPC' for short) does not apply. For all these reasons, Mr.Borkar submits that the impugned order may not be interfered with and this petition be dismissed.

6. Upon perusal of the impugned order as well as record, it is difficult to sustain the impugned order. Although, this may be a suit instituted prior to the year 2002 and, therefore, the proviso to Order 6 Rule 17 of the CPC may not apply, nevertheless, a party cannot be permitted to amend the pleadings after the original suit itself is disposed of and when the matter has come up in appeal. In any case for such an amendment, a very strong case has to be made out which will include explanation as to why such amendment was not applied for during the pendency of the suit. Otherwise, if such an amendment is granted, then the litigation will be unnecessary prolong and even the

decree, which has attained finality, will be vulnerable.

7. The Appeal Court in the present case has completely ignored the aforesaid relevant aspect. It is also not that the amendment was applied for after some subsequent developments had taken place during the pendency of the appeal. If the pleadings were already existing in the written statement, nothing prevented the defendant from leading evidence in support of such plea. At the stage of appeal, there was no justification in seeking leave to amend the written statement and in any case, the learned Appeal Court was not justified in granting the plea.

8. The issue as to whether the plea now sought to be taken is mutually destructive or not is not relevant. However, even assuming that the plea is mutually destructive, there was no justification for the Appeal Court for granting leave to amend the written statement during the pendency of the appeal.

9. For all the aforesaid reasons, the impugned order is set aside.

10. Rule is made absolute in the aforesaid terms. There shall be no order as to costs.

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

(M.S.SONAK, J.)