

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.3405 OF 2016

Maruti Baban Waykar

...Petitioner

vs.

Anil Ratansingh Matkar and Ors,

...Respondents

Mr. V.N. Bolinjkar, for the Petitioner

Mr. Avinash Phatangare I/b. Mr. Mahendra Shingade, for
Respondent No. 1.

CORAM : M. S. SONAK, J.

DATE : MARCH 18, 2019

ORAL JUDGEMENT

. Heard Mr. Bolinjkar, learned counsel Petitioner and Mr. Avinash Phatangare, learned counsel for Respondent No. 1 who is admittedly the contesting Respondent.

2. The challenge in this Petition is to the order dated 27th October, 2014 by which the learned trial Judge has rejected the Petitioner's Application (Exhibit 42) for amendment of the Plaint.

3. The Petitioner is the original Plaintiff. Admittedly, the application for amendment was taken out prior to the commencement of the trial when only issue has been framed and

the trial was yet to commence. The Petitioner seeks to amend the Complaint in order to seek relief of recovery of possession of the suit premises, which in the meanwhile, came into the possession of the Respondents.

4. The learned trial Court has reasoned that the suit premises came into possession of Respondent No. 1 almost 6-7 months prior to framing of issue. The learned trial Court has therefore reasoned that there was delay in taking out application seeking amendment of the Complaint.

5. According to me, the Court has to be liberal when it comes to grant of leave to amend in cases where the trial is yet to commence. Similarly, because there was delay of 6-7 months in taking out the application seeking leave to amend the Complaint, leave to amend could not have been rejected.

6. Accordingly, the impugned order dated 27th October, 2014 is hereby set aside and leave is granted to the Petitioner to amend the Complaint in terms of prayer in Exhibit 42.

7. However, on account of prejudice which is bound to occasion to Respondent No. 1, cost is liable to be awarded in favour of Respondent No. 1. Therefore, the Petitioner is directed to pay the cost of Rs. 10,000/- to Respondent No. 1 within a period of four weeks from today. If there is some difficulty for payment of cost to Respondent No. 1, the Petitioner is at liberty to deposit the same in the trial Court and Respondent No. 1 then may withdraw such cost if deposited.

8. Further it is made clear that merely because leave to amend is granted, it does not mean that Respondent No. 1 is and in any manner precluded for raising of permissible defence under law. This position is made clear and this liberty is expressly granted in favour of Respondent No. 1. Necessary amendment be carried out within four weeks from today.

9. Once the amendment is carried out, copy of the amended Plaint to be served upon the Respondent No. 1 and Respondent No. 1 is permitted to file written statement to the amended Plaint within a period of four weeks from the date of receipt of amended copy of the Plaint.

10. Rule is made absolute in the aforesaid terms.
11. All concerned to act on the basis of authenticated copy of this order.
12. The parties to appear before the learned trial Judge on 25th March, 2019 and produce the authenticated copy of this order.

(M. S. SONAK, J.)