

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO.6042 OF 2017

Puranlal Revachand Hablani ... Petitioner

-vs-

Kalpana Mohanlal Pahlajani
and ors. ... Respondent.

Shri S. S. Alaspurkar, Advocate for petitioner.
Shri A. M. Sudame, Advocate for respondent Nos.1 and 2.

CORAM : A.S.CHANDURKAR, J.

DATE : April 05, 2019

P.C.

The defendant No.1 has challenged the order passed below Exhibit-159 allowing the application for amendment that was moved by the plaintiffs.

It is the case of the petitioner herein that initially in the year 2011 the plaintiffs had filed suit seeking declaration that the plaintiffs had half share in the suit property based on a Will dated 27/11/2008. Possession of the suit property was however not sought in that plaint. The plaint was sought to be amended by filing an application below Exhibit-65 which was partly allowed. In the meanwhile the defendant had moved an application under provisions of Order VII Rule 11 of the Code of Civil Procedure, 1908 (for short, the Code) and the plaint came to be rejected. However, in First Appeal No.50/2014 this Court permitted the

application at Exhibit-91 filed by the petitioner to be withdrawn as a result of which the suit was restored for fresh trial. Thereafter the plaintiffs moved the application below Exhibit-159 seeking amendment to the plaint. That application was allowed by the trial Court.

2. Shri S. S. Alaspurkar, learned counsel for the petitioner submitted that the trial Court erred in permitting the plaint to be amended. The entire nature of the suit was changed by virtue of the amendment. Though the suit was filed on 29/07/2011 the reliefs now sought by way of amendment were not prayed for in the suit. The aspect of limitation was not considered by the trial Court while permitting the amendment. Moreover, three defendants were sought to be added by invoking provisions of Order I Rule 10 of the Code which was not permissible while seeking amendment to the plaint. Without considering all the objections as raised, the trial Court has proceeded to allow the said application. In support of his submissions the learned counsel placed reliance on the following decisions :

- (i) *Prakash G. Goyal and ors. vs. Sayyed Ayaz Ali s/o Makdoom Ali and ors. 2018(5) Mh.L.J. 830*
- (ii) *Revajeetu Builders and Developers vs. Narayanaswamy and sons and ors. (2009) 10 SCC 84*
- (iii) *Alkapuri Co-operative Housing Society Ltd vs. Jayantibhai Naginbhai (Deceased) Thr. L.R. AIR 2009 SC 1948*
- (iv) *Hemlata Harish Bhatia vs Vallabhdas Lalchand Dhamanlal and ors.*

2019(1) AIR Bom R. 711

(v) *Archana Ashok Amburle vs. Arpana Shankar Dudham and ors.*
2019(2) Mh.L.J 67

(vi) *Ghanshyam Newandram Parwani vs. Nandlal Nagardas Vora*
2003(3) Mh.L.J. 945.

3. Shri A. M. Sudame, learned counsel for the respondents supported the impugned order. He submitted that after the suit was restored the defendant No.1 had not yet filed his written statement. The aspect of due diligence would not arise as the trial had not commenced. The amendment as sought was based on subsequent events and it was open for the petitioner to contest the same on merits and he thus submitted that there is no reason to interfere in writ jurisdiction.

4. Heard the learned counsel for the parties. The record indicates that though the suit was initially dismissed on account of rejection of the plaint, the application below Exhibit-91 was withdrawn by the defendant No.1. The suit therefore revived. Even before the written statement could be filed by the petitioner herein, the plaintiffs sought amendment to the plaint based on subsequent events. The trial Court has proceeded to allow the said amendment. Proviso to Order VI Rule 11 of the Code would come in to operation only if the trial has commenced. Hence the aspect of due diligence is not very relevant at this stage. As regards the

contention that the reliefs now sought are barred by limitation or that they could not have been made in view of provisions of Order II Rule 2 of the Code are concerned, it is open for the petitioner to raise an appropriate defence to that effect in his written statement. Same cannot be a reason not to permit the amendment. It is thus found after considering the ratio of the various decisions relied upon by the learned counsel for the petitioner that the trial Court did not commit any jurisdictional error while allowing the amendment.

By observing that it is open for the petitioner to raise all permissible defences in the written statement which is yet to be filed, the writ petition stands dismissed with no order as to costs.

JUDGE