

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

Writ Petition No.6751 of 2018

**(Baburao @ Bhaskar s/o Namdeo Patil .vs. Vijay Tryambak Malge & others.
)**

Office Notes, Office Memoranda of Coram,
appearances, Court's orders or directions
and Registrar's orders

Court's or Judge's orders.

Mr. S.R. Deshpande, Advocate for Petitioner.

Mr. N.B. Kalwaghe, Advocate for Respondent Nos. R-1(A) to 1(C)

CORAM : Manish Pitale, J.

DATED : March 06, 2019.

By this writ petition, the petitioner (original plaintiff) has challenged order dated 29.08.2018 passed by the Civil Judge, Junior Division, Nandura (trial Court), whereby application for amendment of written statement (Exh.100) filed by the respondent has been allowed.

2. The petitioner filed Regular Civil Suit No.77 of 2012 before the trial Court for permanent injunction in respect of a shop which was subject matter of the suit, contending that the respondents were not entitled to disturb his possession and to alter the nature of the suit shop in any manner. The respondents filed their reply to the application for temporary injunction filed by the petitioner, which later on was treated as written statement on 25.10.2012. Thereafter, on 08.10.2013, the trial Court framed issues and consequently the trial commenced. On 03.08.2018, the respondents filed an application for amendment of written statement

(Exh.100) proposing to add paragraph 14-A and 14-B to the written statement. The proposed amendment in paragraph 14-A sought to elaborate certain pleadings already made in the written statement and by the proposed amendment in paragraph 14-B, the respondents sought to bring on record events that occurred in the year 2014, to demonstrate that with passage of time, the two storeyed structure in which the suit shop was located had collapsed in the natural course and that it had been destroyed completely. The said pleadings were sought to be brought on record because they had a direct nexus with the real question in controversy between the parties. This was the reason given in the application for amendment of written statement filed on behalf of the respondents. The said application was opposed by the petitioner but by the impugned order, the trial Court allowed the application subject to the respondents paying costs of Rs.5000/- to the petitioner.

3. Mr. S.R. Deshpande, learned counsel for the petitioner, contended that the application for amendment filed on behalf of the respondents on 03.08.2018 was barred by limitation under Article 137 of the Limitation Act, 1963. It was contended that when the events sought to be brought on record had occurred even as per the respondents in the year 2014, the application for amendment moved on 03.08.2018 was beyond the period of limitation of three years and hence it ought not have to have been entertained by the trial Court. The learned counsel relied on the

judgment of a learned Single judge of this Court in the case of **Harinarayan .vs. Vijay** reported in **2012(2) Mh.L.J.106.**

4. It was further contended on behalf of the petitioner that the trial Court ought not to have entertained the application for amendment filed on behalf of the respondents in the present case, which was admittedly filed after the trial had commenced by framing of issues on 08.10.2013 and the respondents had failed to show due diligence as required under proviso to Order 6 Rule 17 of the C.P.C. It was contended that this aspect was not properly dealt with by the trial Court while granting the application for amendment, only on the basis that procedural law was the handmaid of justice and that the procedural law in the present case could not have been strictly construed. According to the learned counsel, if the interpretation given by the trial Court to Order 6 Rule 17 of the C.P.C. particularly to the proviso thereof is upheld, the proviso introduced by way of amendment in the year 2002 would be rendered meaningless.

5. On the other hand, Mr. N.B. Kalwaghe, learned counsel appearing for the respondents, submits that the trial Court was justified in allowing the application for amendment filed on behalf of the respondents. It was submitted that by way of the proposed amendment, the respondents desired to place on record subsequent events that had occurred during the pendency of the suit, which had a direct bearing on the real question in

controversy to be decided before the trial Court. It was submitted that the reliance placed by the learned counsel for the petitioner on the aforesaid judgment of the learned Single Judge in the case of **Harinarayan .vs. Vijay** (supra) was misplaced because the said judgment had been set aside in appeal by the Division Bench of this Court in the case of **Vijay .vs. Harinarayan** reported in **2013(4) Mh.L.J. 298**. The learned counsel relied upon the aforesaid judgment of the Division Bench of this Court to point out that the limitation of three years provided in Article 137 of the Limitation Act, 1963, was not applicable to an application for amendment of pleadings under Order 6 Rule 17 of the C.P.C. Apart from this, it was contended that there was no question of the respondents having failed to show due diligence in the present matter because the proposed amendment concerned events that had occurred in the year 2013-2014, which was much after the written statement was filed on behalf of the respondents.

6. It was submitted that although the amendment pertaining to events that occurred in the year 2014 was moved in the year 2018 and such an application could have been moved earlier, that in itself could not be a reason to hold against the respondents, particularly when the trial Court had imposed costs on the respondents while allowing the amendment application.

7. Heard learned counsel for the parties and

perused the record.

8. The contention raised on behalf of the petitioner at the out set by placing reliance on judgment of the learned Single Judge of this Court in the case of **Harinarayan .vs. Vijay** (supra) has no substance in view of the said judgment having been set aside by a Division Bench of this Court in the case of **Vijay .vs. Harinarayan** (supra). Therefore, the contention raised on behalf of the petitioner that the limitation of three years would apply under Article 137 of the Limitation Act, 1963, to the application for amendment filed by the respondents, has no substance and it is rejected.

9. The only question that now remains is regarding the claim of the petitioner that by applying proviso to Order 6 Rule 17 of the C.P.C. to the application filed by the respondents in the present case, the trial Court ought not to have entertained the application at all. According to the learned counsel, the respondents had failed to show due diligence in moving the said application because a bare reading of the application itself demonstrated that the proposed amendment in the written statement pertained to events that had occurred in the year 2013-14, while the amendment application was moved on 03.08.2018. It was submitted that such an application was hit by proviso to Order 6 Rule 17 of the C.P.C.

10. A perusal of the record in the present case shows that issues were framed on 08.10.2013 and that

as per settled law, recognised by the Hon'ble Supreme Court in the case of **Vidyabai .vs. Padmalatha** reported in **AIR 2009 Supreme Court 1433**, the trial indeed commenced on the said date. On this basis, it has been contended that when the application for amendment was filed on 03.08.2018, which was much after the commencement of trial, it was hit by proviso to Order 6 Rule 17 of the C.P.C. The said provision reads as follows:-

*“17. **Amendment of pleadings-** The Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties:*

Provided that no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial.”

11. A proper appreciation of the said provision, particularly the proviso thereto would show that a party seeking amendment of pleadings would have to show due diligence and it will have to demonstrate as to why it could not move such an amendment or raise such a matter by way of amendment before the commencement of trial. In the present case, a perusal of the proposed amendment shows that the respondents desire to place on record before the trial Court events that occurred in 2014 when the two

storeyed building in which the suit shop was existing, stood completely destroyed as it was dilapidated and with passage of time, it had been destroyed in the natural course of events. The events sought to be brought on record by way of amendment pertained to the year 2014. As noted above, the trial commenced on framing of issues on 08.10.2013 itself. In such a situation, when the events sought to be brought on record occurred after the trial had commenced, there was no question of respondents having shown due diligence to raise the matter before the commencement of trial. Therefore, there is no substance in the contention raised on behalf of the petitioner that since the respondents failed to show due diligence as required under proviso to Order 6 Rule 17 of the C.P.C., their application could not have been entertained by the trial Court.

12. There cannot be any quarrel with the view that the proposed amendment on behalf of the respondents did concern decision of the real question in controversy between the parties. By way of the aforesaid suit, the petitioner is seeking an injunction against the respondents from disturbing his possession and causing any damage or change to the structure of the suit shop. When the factum of the suit shop not existing anymore is sought to be placed on record by way of amendment, it certainly goes to the root of the matter and it is concerned with the real question in controversy between the parties. Therefore, the trial Court was justified in allowing the amendment

application of the respondents by passing the impugned order.

13. The trial Court has also taken care of the inconvenience that might have been caused to the petitioner due to alleged delay on the part of the respondents to move the application for amendment in the year 2018 by imposing costs of Rs.5000/-. Therefore, this Court finds that there is no error committed by the trial Court by passing the impugned order. **Accordingly, writ petition is dismissed.** It is made clear that this Court has not expressed any opinion on the merits of the contentions that have been incorporated by way of amendment in the written statement of the respondent. In view of dismissal of the writ petition, needless to say, the order dated 18.12.2018 passed in Civil Application No. 3126 of 2018 stands vacated. The said application is disposed of in view of dismissal of the writ petition.

14. In view of the fact that the suit pertains to the year 2012, the trial Court is directed to dispose of the suit as expeditiously as possible and in any case within a period of one year from today.

JUDGE