

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.2187 OF 2018
WITH
WRIT PETITION NO.2188 OF 2018

RAMESH MURLIDHAR AJBE
VERSUS
KANHOPATRA VASANTRAO PANCHAL AND OTHERS

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Advocate for Petitioner : Shri Dighe V.H.
h/f Shri Kale Patil D.R.

AGP for Respondents:

Advocate for Respondents 1 & 2 : Shri Kale Mahesh P.

Advocate for Respondent 3 : Shri Dargad S.S.

h/f Shri Chapalgaonkar S.G.

Advocate for Respondent 5 : Shri Shaikh Wajeed Ahmed

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CORAM : RAVINDRA V. GHUGE, J.

Dated: February 27, 2020

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PER COURT :-

1. By this petition, the same petitioner / respondent No.1 in MACT No.93 of 2010 and in MACT No. 92 of 2010, is aggrieved by identical orders dated 13.12.2017, passed below Exhibit 106 in 1993 of 2010 and below Exhibit No. 112 in MACT No.92 of 2010, by which, the prayer to lead secondary evidence has been rejected. The petitioner is also aggrieved by the order dated 6.1.2017, by which, application Exhibit 71 in MACT No.93 of 2010 and 79 in MACT No.92 of 2010, seeking leave to amend the written statement, have been rejected.

2. I have considered the strenuous submissions of the original

claimants and the opponents in the proceedings before the Tribunal. There is no dispute that this Court had delivered an order on 26.8.2016 in First Appeal Nos.2856 and 2857 of 2013, vide which, the Driver of the vehicle was permitted to be added and subsequent to his addition, he was permitted to file his Written Statement. It was also ordered that the respective sides can lead additional evidence in view of the said addition.

3. The petitioner/original respondent No.1 has filed an application for seeking amendment in the Written Statement in view of the addition of the Driver and the filing of his Written Statement on 30.9.2016. The petitioner moved his application on 19.10.2016. The same has been rejected by a short order on the ground that the application was not supported by an affidavit and was not signed by the original respondent No.1.

4. Considering the above, the petitioner should have immediately preferred a fresh application by following an appropriate procedure and by satisfying the requirements of law. Such a fresh application was not filed. The petitioner, now, submits that he is willing to file a fresh application or this Court may set aside the impugned order dated 16.1.2017 and the petitioner would carry out the amendment immediately.

5. The learned Advocate for the claimants submits that the claimants have no objection, if the amendment is permitted, so that the matter would move towards final adjudication, having been stuck midway through on account of the ad-interim order passed by this Court on 27.7.2018. He submits that whether the petitioner disowns the ownership of the vehicle through the amendment or not, the Tribunal will find out from the RTO record and the registration certificate of the vehicle as to who was the registered owner of the vehicle on the date of the accident.

6. The learned Advocate appearing on behalf of respondent No.5 submits that this petitioner has taken a consistent stand that he is the registered owner of the vehicle involved in the accident. He submits that the petitioner has already admitted in the written statement that he is the owner and now desires to retract the admission by taking a stand that respondent No.5 is the owner. Even before the competent Magistrate, the petitioner had moved an application for release of the vehicle by declaring that he is the registered owner of the vehicle.

7. In my view, considering the law laid down by the Honourable Apex Court in the matters of Revajeetu Builders and Developers Vs. Narayanaswamy and sons [(2009) 10 SCC 84 = 2009 (8) MLJ 907-

(SC)] and Chakreshwari Construction Private Limited Vs. Manohar Lal [(2017) 5 SC 212], the Court is not to test the merits of the amendment and a respondent / defendant can take contradictory stands at his own risk. As the proverb goes that '*Humans may lie but documents would not lie*', the onus and burden would be on the petitioner to establish as to who is the registered owner of the vehicle on the date of the accident.

8. In view of the above, the impugned order denying leave to amend, dated 6.1.2017, is quashed and set aside. The petitioner shall carry out the amendment on/or before 20.3.2020 and shall deposit an amount of Rs.10,000/- in the first petition and Rs.5,000/- in the second petition, as costs, which the claimants shall withdraw without conditions in equal proportions. Amount to be deposited on/or before 23.3.2020 and freshly typed amended copy of the written statement would also be filed on 23.3.2020.

9. In so far as the second impugned order dated 13.12.2017 passed below Exhibit 106 in MACT No.93 of 2010 and below Exhibit 112 in MACT No.92 of 2010 denying leave to the petitioner to lead secondary evidence is concerned, I find that the fact situation in the two proceedings would change pursuant to the amendment in the written statement.

10. So also, this Court has delivered an extensive judgment in the matter of Shaikh Aftab Ahmed Shah Vs. Bhimrao Sandu Waghmare and another - Writ Petition No. 8422 of 2019, dated 1.10.2019, by which, the facts and circumstances in which liberty to lead secondary evidence can be granted, has been discussed. Therefore, pursuant to the amendment, the reason in paragraph No.4 of the impugned order, due to which the Tribunal refused to grant permission to lead secondary evidence, would not exist as the petitioner is now permitted to amend the written statement, in which, he has taken a stand that he had subsequently sold the vehicle involved in the accident to respondent No.5.

11. As such, without interfering with the impugned order dated 13.12.2017, leave to file a fresh application for leading secondary evidence is granted and the petitioner shall file such an application on/or before 31.3.2020, failing which, he shall lose the right of filing such an application. If such an application is filed within the time prescribed, the Tribunal shall decide the said application as expeditiously as possible and in any case on/or before 30.6.2020.

12. Taking into account the hardships being suffered by the claimants, the Tribunal shall decide both the proceedings as

expeditiously as possible and in any case on/or before 31.12.2020.

13. Both these petitions are, therefore, partly allowed in the above terms.

(RAVINDRA V. GHUGE, J.)

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