

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

910 WRIT PETITION NO.3303 OF 2009

M/s. Jaya Enterprises,
Through its sole proprietor
Mrs. Mahadevi w/o Dhondiba Muley
Age 55 years, Occ. Business,
R/o. Shop No.11, Bhalchandra
Blood Bank, Gandhi Market, Latur
Through P.A.H. Dhondiba Shankar Muley,
Age 58 years, Occ. Business,
R/o. Latur

...Petitioner

versus

1. The Secretary,
Health Department,
(Medical Education),
Mantralaya, Mumbai
2. The Director,
Medical Education and Research
Dental College Building
Saint George Hospital Compound
near C.S.T. Station,
Fort, MUMBAI
3. Dean,
Govt. Medical College,
Civil Hospital Compound
Latur, Tq. And Dist. Latur

...Respondents

.....
Advocate for Petitioner : Mr. R B Deshmukh
AGP for Respondents: Mr. S.R. Yadav
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CORAM : V. K. JADHAV, J.
DATED : 13th FEBRUARY, 2020

ORAL JUDGMENT:-

1. Heard both sides.

2. The petitioner is the original plaintiff. The petitioner has instituted the suit bearing Special Civil Suit No. 147 of 2007 for recovery of the amount of Rs.10,03,733/- with future interest. The suit for recovery of the amount pertains to supply of goods/things, such as medicines, glassware, chemicals, instruments, and other equipment to defendant No.3. Pending the suit, the petitioner-plaintiff has filed an application Exh.25 under Order VI Rule 17 of C.P.C. for amendment in the plaint. The respondents have not filed any say to the said application. Learned Judge of the trial court by impugned order dated 18.2.2009 below Exh.25 partly allowed the application and thereby allowed the proposed amendment to the extent of para No. 4/A, however, rejected the prayer to the extent of proposed amendment in para 1/A. Hence, this writ petition.

3. Learned counsel for the petitioner submits that the petitioner plaintiff is woman and she had executed special power of attorney in favour of her husband for the reason that her husband since beginning is looking after the said business and she being the ordinary woman, is not in a position to pursue the suit. Learned counsel submits that the proposed amendment in para 1/A is necessary since the petitioner-plaintiff is going to examine her power of attorney on behalf of her and it is therefore essential for the petitioner-plaintiff to carry out the said amendment in the plaint. Learned counsel submits that the proposed amendment as sought in para 1/A is formal in nature and that would not cause any prejudice

to the defence of the respondents-original defendants.

4. Learned A.G.P. for the respondents submits that the respondents have not filed any say, however, it is difficult to believe that the petitioner-plaintiff, who is having licence to run the business of selling of medicines, chemicals etc. is illiterate and she is not in a position to pursue the suit as well as she is not in a position to look after the day to day business of her establishment. Learned A.G.P. submits that the proposed amendment in para 1/A of the application Exh.25 is uncalled for. The trial court has rightly rejected the said proposed amendment by partly allowing the application. No interference is required. There is no substance in this writ petition. The writ petition is liable to be dismissed.

Learned A.G.P., in the alternate, submits that if this writ petition is allowed, then it is necessary to be considered that at the behest of the petitioner-plaintiff this writ petition has been preferred and the interim stay to the further proceeding in the suit has been obtained. In view of the same, further proceedings in the said suit remained pending for years together and as such, if the suit is decreed, the respondents would unnecessarily constrain to bear the huge amount towards interest i.e. for 11 years.

5. On going through the contents of application Exh.25 particularly para 5, wherein proposed amendment is stated in detail,

it appears that the said amendment is sought in terms of the documents in respect of special power of attorney executed by the petitioner-plaintiff in favour of her husband. Learned Judge of the trial court has not given any justifiable reason to reject the prayer to the extent of proposed amendment in para 1/A. Furthermore, even if the said amendment is allowed, same would not cause any prejudice to the defence of the respondents. The trial court has observed that the amendment as sought in para 1/A is not material. However, the said observations are contrary to the settled view that the petitioner plaintiff to make out a case for examination of power of attorney instead of entering into witness box herself. In view of the same, I am inclined to allow this writ petition.

6. So far as the submissions in respect of the interest amount is concerned, the respondents are at liberty to raise the same before the trial court and it is for the trial court to consider the same on its own merits. However, it is to be mentioned here that though the petitioner-plaintiff has preferred this writ petition and obtained stay, however, ultimately, this writ petition came to be allowed. Accordingly, I proceed to pass following order:-

O R D E R

I. Writ petition is hereby allowed.

- II. The order dated 18.02.2009 to the extent of rejection of proposed amendment in para 1/A is hereby quashed and set side.
- III. The application Exh.25 is allowed in terms of its prayer clause in its entirety including the proposed amendment in para 1/A.
- IV. Writ petition is accordingly disposed of. Rule made absolute in the above terms.

(V. K. JADHAV, J.)

rlj/