

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 1219 OF 2020**

Kumaran Joshi

...Petitioner

Versus

Sreedharan Gopinathan

...Respondent

Mr. E. A. Sasi for the Petitioner

Mr. E. K. Sasidharan for the Respondent No. 1

CORAM : REVATI MOHITE DERE, J.
THURSDAY, 13th FEBRUARY 2020

P.C. :

1 Heard learned counsel for the parties.

2 By this petition, the petitioner has impugned the order dated 26th September 2019 passed by the learned Additional Judge, City Civil Court, Greater Bombay, below Exhibit 25 in Suit No. 9244/1995, by which the respondent/plaintiff's application for expunging/striking off portions of affidavit of examination filed by the petitioner (defendant) was allowed.

3 Learned counsel for the petitioner submits that there was no justification for the learned Judge to pass the impugned order, inasmuch as, the paragraphs which are directed to be ignored by the impugned order are infact relevant and germane to the case.

4 Learned counsel for the respondent opposes the petition. He submits that no interference is warranted in the impugned order. He further submits that the petitioner/defendant had filed an application seeking amendment of his written statement in 2017 and that the very same paragraph which the petitioner sought to bring by the additional written statement was rejected by the trial Court vide order dated 27th October 2017. He submits that the order rejecting the petitioner's prayer for amendment of the written statement, was challenged by the petitioner in this Court and this Court vide order dated 11th January 2018 dismissed the petitioner's writ petition being *sans* merit. He submits that the trial Court has rightly, after considering the legal position, allowed the respondent/plaintiff's application and has directed that the contents of certain paragraphs mentioned in the impugned order be ignored and that the respondent/plaintiff need not examine the petitioner (DW 1) in respect of the said paragraphs mentioned in the affidavit of evidence of the petitioner.

5 Perused the papers. The respondent/plaintiff has filed a suit bearing No. 9244/1995 for recovery of money as against the petitioner/defendant. The petitioner/defendant appeared in the said suit and filed his written statement. It appears that in 2017, the petitioner/defendant

filed Chamber Summons seeking amendment of his written statement. Certain paragraphs were sought to be added in the written statement. The trial Court, after hearing the parties, observed that the proposed amendment sought, washes out the earlier admissions and proposes a new case and as such dismissed the Chamber Summons taken out by the petitioner vide order dated 27th October 2017. It was also observed that the said application was filed after almost 22 years and as such the petitioner was trying to delay the case. Being aggrieved by the said order dismissing petitioner's Chamber Summons seeking to file additional written statement, the petitioner filed a writ petition in this Court. This Court (Coram: Dr. Shalini Phansalkar-Joshi, J.) had vide order dated 11th January 2018 passed in Writ Petition (Stamp) No. 34754/2017, by a detailed order, dismissed the petitioner's writ petition. This Court observed that the suit is of the year 1995 and was decreed ex-parte and now after its restoration, the petitioner filed an application seeking amendment of the written statement after 22 years, thereby further protracting the hearing of the Suit. Thereafter, the petitioner (defendant) filed his affidavit of evidence by way of examination-in-chief and incorporated in the said affidavit the very grounds mentioned in the earlier Chamber Summons seeking amendment of the written statement. It is not in dispute that the paragraphs sought to be inserted in the affidavit of petitioner (defendant) were the very paragraphs

which were dealt with by the trial Court as well as this Court whilst deciding the petitioner's Chamber Summons/Writ Petition seeking amendment of the written statement. As noted above, whilst rejecting the Chamber Summons, the trial Court had come to a conclusion that by the amendment, the petitioner was seeking to bring on record a new case, thereby washing out the earlier admissions.

6 As noted above, the trial Court, in view of the aforesaid facts, rightly allowed the respondent/plaintiff's application (Exhibit 25) and directed that the contents of certain paragraphs of the examination-in-chief of DW 1 be ignored and the respondent/plaintiff need not cross-examine DW 1 in respect of the same. No infirmity can be found in the said order. Accordingly, the petition is dismissed.

7 Since the suit is of the year 1995, the trial Court is requested to decide the said suit as expeditiously as possible and in any event, within six months from the date of receipt of this order.

REVATI MOHITE DERE, J.