

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.2039 OF 2021

Sou. Shobha Namdeo Chavan Petitioner

Vs.

Shivaji Sahadu Dolas Respondents
(since deceased) thru' LR's.

Mr. Ashok Tajane for Petitioner.
Mr. Avinash B. Avhad for Respondents

Coram : NITIN W. SAMBRE, J.
Date : 23rd AUGUST, 2021

P.C.:

1. This Petition is by the Plaintiff in Special Civil Suit No. 753 of 2000, in which a prayer for amendment of the plaint came to be allowed vide order dated 16th August, 2013 passed in Writ Petition No. 993 of 2011. The Petitioner-Plaintiff failed to carry out amendment within a period of two weeks, as was directed by this Court, on 16th August, 2013. As a consequences, moved an application Exhibit 114 seeking extension of time to carry out the amendment. Said prayer vide

Exhibit 114 came to be rejected, vide impugned order dated 22nd February, 2019.

2. Shri. Tajane, learned counsel appearing for the Petitioner would urge that the Petitioner, a lady, in her advance age is having serious health ailments and as such she was unable to give appropriate instructions in the matter. According to him, the suit is at the stage of cross-examination of the Petitioner-Plaintiff and in case if the Petitioner is permitted to carry out amendment, no prejudice is likely to be caused to the Respondent as the failure to carry out amendment pursuant to the order of this Court can be considered as a procedural and technical error.

3. Counsel for the Respondent-Defendant would oppose the plea on the ground that the Petitioner was sensitive to the order of this Court passed on 16th August, 2013 allowing the amendment as the Petitioner by acting in part compliance of the same has withdrawn an amount of Rs.20,000/-, which was deposited in compliance of the order

passed in above petition. According to him with an intention to prolong the Suit proceedings, the Petitioner has intentionally failed to carry out the amendment though time limit was fixed.

4. He would further claimed that the trial Court order is very much justified as the time framed fixed cannot be extended by the trial Court.

5. Considered submissions.

6. I see substance in the submissions made by the learned counsel for the Respondent-Defendant that the trial Court cannot extend time period of two weeks for carrying out amendment as was restricted vide order of this Court dated 16th August, 2013 passed in Writ Petition No. 993 of 2011. As a pre-condition to the order of grant of amendment, the Petitioner was directed to deposit Rs.25,000/- of which he has withdrawn Rs.20,000/-.

7. As such, the order impugned passed by the trial Court is in tune with the legal provisions and does not warrant any interference. However, this Court cannot leave the Petitioner remedy-less.

8. In case, if the Petitioner deposits an amount of Rs.50,000/- towards costs in the trial Court within a period of four weeks from today, the time to carry out an amendment shall stood extended by one week from the date of such deposit. In case, if the Petitioner fails to deposit the amount of costs of Rs.50,000/-, the Petition be deemed to be rejected.

9. In case, if the Petitioner deposits such costs and failed to carry out amendment within a period of one week, the trial Court shall not grant further extension to carry out amendment.

10. The Respondent-Defendant shall be entitled to withdraw said costs of Rs.50,000/- deposited by the Petitioner.

11. The Writ Petition stands disposed of accordingly.

(NITIN W. SAMBRE, J.)