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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 9074 OF 2018

Vikrant Sidram Mathpati and anotherPetitioners

V/s.

M/s. Arti Company, SolapurRespondents
and another

Mr. Ashok B. Tajane for the Petitioners
Mr. Prasad P. Kulkarni for Respondent no. 1

CORAM : NITIN W. SAMBRE, J.

DATE: FEBRUARY 9, 2021.

P.C.:

1] During the pendency of Appeal questioning the Decree of dismissal of Suit for recovery, Respondent-Plaintiff moved an Application for amendment vide Exh. 10A which came to be allowed vide impugned order dated 09/07/2018 by the learned District Judge-4, Solapur. As such, this Petition.

2] The submissions of Mr. Tajane, learned counsel for the

Petitioner are, the nature of amendment which is sought to be incorporated will result in filling up lacunas which are basis for dismissal of a Suit. Mr. Tajane then would urge that certain reliefs such as recovery of rent is a time bar as claimed which is sought to be inserted by way of amendment. Certain amendments Petitioner intends to incorporate in the form of evidence so as to cover up the lacunas. As such, amendment ought not to have been granted.

3] The submissions of learned counsel for Respondent are, learned District Judge thought it fit to grant the amendment which was necessary for determining the issues involved in the Suit. According to him, Appeal is continuation of the Suit and since the Suit was initiated prior to amendment to Order VI Rule 17 of the Code of Civil Procedure, 1908, Respondent has every right to pray and carry out amendment which are not permitted under the amended provisions of the C.P.C. He would further urge that amendments are in tune with original pleadings and as such same was rightly allowed.

4] Considered rival submissions.

5] Upon perusal of amendment Application as is sought to be carried out by Respondent-Plaintiff in the Suit pending adjudication of the Appeal, what is required to be noted is, Respondent intends to carry out certain clarificatory changes/addition in the Plaint that too at appellate stage. Certain amendments appear to be filling in lacunas which are left while conducting the Suit which has resulted into its dismissal.

6] Apart from above, evidence need not be pleaded in the Plaint. In the aforesaid background, in my opinion, the Court below has committed an error in granting the amendment.

7] Petition is allowed. Order dated 09/07/2018 passed below Exh. 10A in Civil Appeal No. 166 of 2017 is hereby quashed and set aside. Exh. 10A stands rejected.

[NITIN W. SAMBRE, J.]