

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.1278 OF 2017

Sou.Bebitai Ramgonda Patil

... Petitioner

V/s.

Ajit Baburao Bele & Ors.

... Respondents

Mr.Umesh R. Mankapure for the Petitioner.

Mr.Ranjeet Patil for the Respondent Nos.1 to 5.

CORAM : MADHAV J. JAMDAR, J.

DATE : 12TH FEBRUARY, 2021.

P.C:-

1. The Petitioner, who is the Original Plaintiff in Regular Civil Suit No.232 of 2011 pending in the Court of Civil Judge, Junior Division, Miraj has challenged the order dated 17/08/2016 of the Learned Civil Judge, Junior Division, Miraj passed below Exhibit-73 in said Suit. The said application Exhibit-73 was filed seeking amendment of the plaint.

2. Mr.Mankapure, learned Advocate for the Petitioner submitted that the Learned Trial Court while rejecting the amendment application has considered merits of the amendment and has rejected amendment application on the ground that the contentions raised in the amendment are not mentioned by the Plaintiff either in original plaint or in evidence affidavit.

3. Mr.Patil, learned Advocate for the Respondents submitted that the Learned Trial Court has inter alia rejected the application on the ground that no details are given and no case is made out of due diligence.

4. The Learned Trial Court has set out certain factual details in paragraph 6 of the impugned order. The cause of action took place on 20/07/2011, original suit was filed on 10/08/2011. The Petitioner requested for deciding Exhibit-5

application alongwith the main suit. Thereafter the issues were framed on 25/04/2014 and inspite of giving several opportunities the Plaintiff failed to file their evidence affidavit. The suit was adjourned to 16/09/2015 for purpose of passing order of “No Evidence” against the Plaintiff and thereafter the evidence affidavit was filed on 16/09/2015. On 3/02/2016 as the Plaintiff has failed to remain present for cross examination, “No cross examination” order was passed against the Plaintiff and thereafter present application seeking amendment of the Plaint bearing Exhibit-73 came to be filed on 3/02/2016. The Learned Trial Court further observed that application seeking amendment is very vague, no details are given and it is not explained why the amendment is sought after a period of 5 years.

5. Although Mr.Mankapure is right in submitting that while rejecting the application for amendment, the Learned Trial Court has also considered in some respect the merits of amendment application, however, perusal of the impugned order shows that apart from considering merits to some extent, the Learned Trial Court has considered other aspects. It is specifically mentioned in the impugned order that after considerable delay and faced with the order that the Plaintiff would not be allowed to file affidavit of evidence, ultimately, affidavit of evidence was filed on 16/09/2015. The present amendment application is filed on 3/02/2016. Thus, the trial has commenced on 16/09/2015, the date on which the Plaintiff had filed the evidence affidavit and thereafter the amendment application is filed.

6. Perusal of the amendment application clearly shows that no details are given regarding when the alleged forcible possession was taken by the Defendant Nos.1 to 5. Proviso to Order VI Rule 17 of the Code of Civil Procedure, 1908 which is regarding Amendment of pleadings clearly provides that no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due

diligence, the party could not have raised the matter before the commencement of trial. By the proposed amendment the Petitioner is contending that the Respondents have taken forcible possession after the filing of the suit. The Plaintiff has not given any details whatsoever in the application so as to examine the aspect whether the Plaintiff has filed the application with due diligence. The date of alleged dispossession is not at all mentioned.

7. It is settled legal position that unless Court comes to the conclusion that the Plaintiff has filed amendment application with due diligence, the Court has no jurisdiction to allow the amendment application, if the same is filed after the commencement of trial. Thus, although the Learned Trial Court has also considered partly merits of the contentions raised in the amendment application, other elaborate reasons are also given including delay in filing the amendment application. Therefore, this is not a case where this Court should interfere under Article 227 of the Constitution of India. The Writ Petition is dismissed with no order as to costs.

[MADHAV J. JAMDAR, J.]