

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO.1235/2019

Rajabhau s/o Ramchandra Mhaske

...Versus...

Vasant s/o Parasram Wakode

Office Notes, Office Memoranda of Coram,
appearances, Court's orders or directions
and Registrar's orders

Court's or Judge's orders

Shri Bhushan Dafle, Advocate for petitioner
Ms Priyanka Dubey, Advocate h/f Shri M.S. Wakil, Advocate for respondent

CORAM : AVINASH G. GHAROTE, J.

DATE : 02/09/2021

1. Heard Shri Bhushan Dafle, learned Counsel for the petitioner and Ms Priyanka Dubey, learned Counsel holding for Mr. M.S. Wakil, learned Counsel for the respondent.

2. The present petition challenges the order dated 30/11/2018, passed by the learned Trial Court, whereby the application for amendment, as filed by the defendant, seeking to amend his written statement, has been rejected. The ground for rejection is that the proposed amendment was well within the knowledge of the defendant at the time of filing of the written statement at Exh.11 and if allowed

would change the nature of the defence. Moreover, it is held not to be necessary to decide the controversy.

3. In so far as the law on the point is concerned, it is a settled position of law that amendment to the written statement cannot be equated with an amendment to the plaint. While the amendment to the plaint has to be strictly construed and cannot be permitted once the trial has commenced, in view of the proviso to Order VI Rule 17 of Code of Civil Procedure, unless the parameters permitting it to be so done are established to the satisfaction of the Court, the amendment to a written statement has to be on the other hand, viewed liberally. It is even permissible for the defendant to raise inconsistent and contrary pleas.

4. The present suit is for specific performance of an agreement, which was filed on 18/2/2015, in which the written statement came to be filed on 23/8/2015, the issues were framed on 07/10/2015 and the affidavit in lieu of evidence of P.W.1/plaintiff came to be filed on 08/03/2016.

5. Ms Dubey, learned Counsel for the respondent contends that thereafter there were several applications filed by the defendant for adjournments, which were considered and allowed, some with costs. She, therefore, submits that this is merely an attempt to delay the trial of the matter and

nothing else.

6. On 17/07/2018, the plaintiff filed on record, the documents, which the plaintiff sought to prove in his evidence. An application for amendment came to be filed on 17/07/2018 by the defendant/petitioner, to which a stay was given on 01/08/2018 and by the impugned order dated 13/11/2018, the same came to be rejected. The present petition came to be filed on 11/02/2019, in which, on 18/02/2019 further stay of the proceedings were granted, prior to which on 16/02/2019 the further chief was recorded. The trial is, thus, stayed since 18/02/2019. In the above background, learned Counsel for the petitioner/defendant Shri Dafle, by relying upon *Usha Balashaheb Swami and others Vs. Kiran Appaso Swami and others, 2007 AIR (SC) 1663, Baldev Singh and others Vs. Manohar Singh and another, 2006 (5) ALL MR (SC) 107, B.K.N. Pillai Vs. P. Pillai, 2000 AIR (SC) 614 and Mrs. Maria Santana Labo (deleted) and others Vs. Cofre de Capela de S. Joao Baptista De Umtavaddo Calangute alias Capela De Sao Joao Batista Do, Bairro Umtavaddo and others, 2019 (3) AIR Bom. R. 120* submits, that any inconvenience caused to the defendant can always be compensated in terms of money and the defendant would further undertake to ensure that the trial is completed as early as possible. He further submits that raising of an additional defence as is sought to be done

would not cause any prejudice to the plaintiff as the plaintiff has to stand on his own legs. He further submits that the proposed amendment is necessary, in as much as, it merely is based upon the law as applicable in the matter, however, in order to raise a foundation for the same, it is necessary that the facts be pleaded.

7. It is a settled position of law that the amendment to a written statement has to be viewed in a different liberal background altogether than that of a plaint. The strict view of the proviso to Order VI Rule 17 of the Code of Civil Procedure has to be considered in this background. In that view of the matter, considering what has been held in the judgments relied upon, permitting the amendment of written statement, would not cause any prejudice to the plaintiff, and any inconvenience could also be compensated in terms of money, the pleading of foundational facts for raising a defence permissible in law cannot be construed being unnecessary to decide the controversy between the parties. That being the position, in my considered opinion, the proposed amendment needs to be allowed, however, at the costs of Rs.25,000/- to be paid by the defendant to the plaintiff, as a condition precedent, before carrying out the amendment, which should be so carried out on or before 14/09/2021, upon production of a internet downloaded copy of this order before the trial Court. It is also made clear that

the defendant shall not delay the trial by seeking any unjustifiable adjournments. The trial Court shall decide the suit as expeditiously as possible and in any case within a period of twelve months from today.

8. The writ petition is disposed of accordingly.

(AVINASH G. GHAROTE, J.)

Wadkar