

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.6898 OF 2021

Bhujangrao Ramkrushna Chinchole ... PETITIONER

VERSUS

1. Hiralal Babulal Bhavsar

2. Datta Pandurang Mokashe ... RESPONDENTS

Mr. Vijay B. Patil, Advocate for petitioner;

Respondent Nos. 1 and 2 are served

CORAM : PRITHVIRAJ K. CHAVAN, J.

RESERVED ON : 18/04/2022

PRONOUNCED ON : 20/04/2022

PER COURT :-

1. By this petition, the petitioner/original plaintiff has impugned an order dated 20.2.2021 passed by the 4th Joint Civil Judge, Junior Division, Jalgaon, whereby an application under Order VI Rule 17 of the Code of Civil Procedure preferred by the respondents/defendants, came to be allowed.

2. Facts, essential for disposal of the petition are summarized as follows.

3. The petitioner has filed Regular Civil Suit No.479/2014 for declaration and injunction. After completion of the pleadings and framing of issues, affidavit in view of the examination-in-chief on behalf of the petitioner came to be filed, whose cross-examination was over on 20.2.2018. When the matter was fixed for final arguments, the respondents/defendants moved an application below Exhibit-200, seeking to amend the written statement.

4. Certain vital admissions were extracted during the cross-examination of the petitioner wherein he has admitted the fact of transfer of his 50% right in the suit well in favour of his son by way of partition. It was the contention of the respondents/defendants that the said transfer was illegal as it was a transfer *lis pendense*. Obviously, this fact was not within the knowledge of the defendants despite due diligence and, therefore, there was no question of pleading the same in the written statement. It is the contention of the defendants that in order to resolve the controversy between the parties, the

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said fact is required to be pleaded in the written statement.

5. I heard learned Counsel for the petitioner.

6. It is a matter of record that the amendment in the written statement has been sought quite belatedly when the final arguments were already heard by the predecessor of the learned Judge, who had passed the impugned order. Proviso to order VI Rule 17 of CPC contemplates that no application for amendment shall be allowed after the trial has commenced, unless the Court comes to conclusion that in spite of due diligence, the parties could not have raised the matter before the commencement of the trial. The learned Trial Judge, therefore, rightly placed useful reliance on a decision of the Supreme Court reported in (2009) 10 SCC 84 in case of Revajeeetu Builders and Developers Vs. Narayanswamy and Sons and Ors. The relevant para is extracted below, -

"63. On critically analyzing both the English and Indian cases, some basic principles emerge which ought to be taken

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into consideration while allowing or rejecting the application for amendment:

(1) whether the amendment sought is imperative for proper and effective adjudication of the case;

(2) whether the application for amendment is bona fide or mala fide;

(3) the amendment should not cause such prejudice to the other side which cannot be compensated adequately in terms of money;

(4) refusing amendment would in fact lead to injustice or lead to multiple litigation;

(5) whether the proposed amendment constitutionally or fundamentally changes the nature and character of the case; and

(6) as a general rule, the court should decline amendments if a fresh suit on the amended claims would be barred by limitation on the date of application."

7. In the given set of facts and in view of Order I Rule 13 of CPC, the ground of objection has undisputedly arisen subsequent to the cross-examination of the petitioner. The learned Trial Court has, therefore, rightly observed that if the defendants are restrained from raising such objection at that stage, it would tantamount to waiving the same and the defendants would be debarred from raising such objection before the Appellate court. As such, the learned Trial Court

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has permitted the defendants to amend the written statement seeking to implead an additional defence of non-joinder of necessary party as it was not available before the commencement of the trial.

8. As such, the impugned order passed by the Trial Court does not warrant interference of this Court under its supervisory jurisdiction. The impugned order is correct, legal and proper.

9. Consequently, the petition stands dismissed.

10. The Trial Court shall proceed further in accordance with law without granting unnecessary adjournment to any of the parties. The Trial Court shall decide and dispose of the suit within ten weeks from the date of passing of the order.

(PRITHVIRAJ K.CHAVAN)
JUDGE

BDV