

**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD**

CIVIL REVISION APPLICATION NO. 44 OF 2023

DR. BABASAHEB AMBEDKAR MARATHWADA UNIVERSITY
AURANGBAD THROUGH ITS REGISTRAR

VERSUS

AHMED KHAN KARIM KHAN AND ANOTHER

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Advocate for Applicant : Mr. A.S. Bajaj
Advocate for Respondent No. 1 : Mr. M.M. Khan
Advocate for Respondent No. 2 : Mr. N.E. Deshmukh

CORAM : R.M. JOSHI, J.

DATE : 24th March, 2023

PER COURT :

1. Applicant / original defendant no. 1, in Wakf Suit No. 3 of 2012, takes exception to order passed by Wakf Tribunal dated 20th January, 2023, below Exh. 154 allowing application filed by the plaintiff for amendment of the plaint under Order VI Rule 17 of the Code of Civil Procedure. Parties are referred by their nomenclature in suit.

2. Brief facts which led to the filing of present Civil Revision Application can be narrated as under :

i. Plaintiff / Ahmed Khan filed suit against Dr. Babasaheb Ambedkar Marathwada University, Aurangabad, and Wakf Board for seeking possession of the suit premises situated at Qutubpura, Jaisingpura, Aurangabad, to be delivered to defendant no. 2 – Wakf Board being Wakf property. Specific averments were made with regard to the identification of suit property and related contentions. Defendant no. 1 – University appeared and filed it's written statement opposing the contentions of the plaintiff.

ii. After framing of the issues, plaintiff examined himself and was undergoing cross-examination from defendant no. 1 / University. In the meantime, on 17th November, 2022, Plaintiff filed application (Exh. 154) under Order VI Rule 17 of CPC, seeking deletion of certain portion of the plaint on the ground that it has been recorded due to a typographical error. Amendment is also sought in respect of subsequent events and it is claimed that they are necessary for determination of issues involved in the suit.

iii. This application was opposed by the defendants on the

point of its maintainability as well as on merit in order to show as to how the application cannot be allowed.

3. Learned counsel for the defendant no. 1 states that Tribunal has committed serious error in not considering statutory provisions of Order VI Rule 17 of CPC, which creates an embargo on amendment after the commencement of trial. According to him plaintiff has given vital admissions in cross examination and in order to negate and overcome the same, present amendment is sought in the plaint, which is not permissible in law. In support of his submission, he relied upon the judgments of the Apex Court in the case of **Revajeetu Builders and Developers Versus Narayanswamy and Sons and others, (2009) 10 SCC 84** and **Vidyabai and others Versus Padmalatha and another, (2009) 2 SCC 409**.

4. Learned counsel for the plaintiff supported impugned order. According to him, it was always open for the plaintiff to correct inadvertent errors committed by him while incorporating pleadings in the plaint. He also stated that there are subsequent events which have relevance to the decision of the suit and, therefore, the Tribunal has rightly allowed the application. In support of above contentions, he

placed reliance on judgment of the Apex Court as well as Madras High Court in the case of **Abdul Rehman and another Versus Mohd. Ruldu and others, 2012 (11) SCC 341** and **K. Shanmugham Versus S. Lakshmi Ammal, 1996 AIHC 3408**.

5. In order to appreciate the rival contentions, it would be necessary to consider Order VI Rule 17 of CPC, which reads thus :

“Amendment of pleadings. – The Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties :

Provided 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.”

6. No doubt, this provision enables the Court to allow any party to alter or amend his pleadings, which are necessary for the purpose of determining the real question of controversy between the parties, at any stage of proceeding. However, no such application shall

be allowed after the commencement of trial unless the Court comes to the conclusion that in spite of the due diligence the parties could not have raised the issue before commencement of the trial. In the instant case, trial has already commenced and, in fact, the cross-examination of plaintiff is partly done. In such circumstances, unless the Court comes to the conclusion that in spite of due diligence, plaintiff could not raise the issue before commencement of trial, there is no jurisdiction to allow amendment. Perusal of impugned order does not indicate any finding recorded by Tribunal about due diligence of plaintiff.

7. Application filed before the Tribunal shows that it is the case of the plaintiff that on account of typographical error certain pleadings are incorporated in paragraph no. 5 of plaint. Deletion thereof is sought. It is, therefore, incumbent on plaintiff to substantiate said contention if he wants to succeed in seeking order on application.

8. When typographical error is claimed, the Court needs to be on guard, because such plea can always be deceptive. On simple averment like this if amendment is accepted then practically in all cases amendment would have to be allowed. There is duty cast upon Court to ascertain truthfulness of such claim.

9. It is pertinent to note that plaintiff herein has not only taken the averments in the plaint but has also lead evidence in accordance with the plaint. It may be argued that in view of Order XVIII Rule 4 of CPC, affidavit of evidence is permitted to be filed and, therefore, ordinarily it is reproduction of the plaint and, therefore, mistake in plaint may carry forward in the evidence. Even, if such concession is given to the plaintiff, what is relevant here that the plaintiff was subjected to the cross-examination on the same averments and even then, he did not take stand before the Tribunal that said contents in the plaint resulted due to the typographical error. This Court finds force in the contention of the counsel for the applicant that in order to overcome the admissions given in the cross-examination, amendment is sought. Needless to record that it is not permissible for the party to amend the pleadings in order to overcome the admissions given in favour of the other side.

10. As far as the averments with regard to the orders passed on 02nd December, 2016 and registration of Wakf, the said events have occurred prior to commencement of trial and, therefore, in absence of due diligence being shown by the plaintiff indicating the reason for which he could not raise the said matter before the commencement of

trial, application ought not to have been allowed. Perusal of the order on record shows that the Tribunal has failed to take into consideration provisions of Order VI Rule 17 of the CPC, in proper perspective and in mechanical manner accepted the contention of the plaintiff to allow application.

11. In so far as the amendment sought by the plaintiff in respect of the incidents occurred after the commencement of trial are concerned, it only needs to see, whether the said facts are relevant for the decision of the case and if it is so, there would not be any impediment to allow such amendment. Paragraph 8-A of the application indicates that the subsequent events with regard to the demolition of wall and commencement of construction are sought to be incorporated and corresponding prayers are made. Having regard to the nature of the suit and reliefs claimed therein, the said amendment appears relevant for the decision of the issues involved. In such circumstances, impugned order to that effect could sustain.

12. In view of the above discussion, the application deserves to be partly allowed. The impugned order is partly set aside as discussed above. The plaintiff is permitted to amend plaint to the

extent of paragraph 8-A of the application along with prayer clause B-1 and B-2.

13. Application stands disposed of in above terms.

[R.M. JOSHI, J.]

SPChauhan