

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.3789 OF 2023

Vanita Laxman Shahane

...Petitioner

Versus

Ramdas Pralhad Sakkarwar And Others

...Respondents

Mr. S.V. Dixit, Advocate for the petitioner.

.....

[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 3rd APRIL, 2023

ORDER :

1. The petitioner is aggrieved by the order passed by learned 2nd Joint Civil Judge, Junior Division, Nanded, below Exhibit-57 in Regular Civil Suit No. 322 of 2016, thereby allowing the application filed by plaintiff under Order VI Rule 17 of Code of Civil Procedure.

2. Heard the learned advocate for the petitioner. Perused the grounds raised in the petition, annexures thereto, impugned order and the citations relied upon by the petitioner.

3. Learned advocate for the petitioner assailed the impugned order on the ground that there is total lack of due diligence on the part of the plaintiff in filing the amendment

application and the amendment application has been allowed after commencement of trial. The ground in the proposed amendment was available to the plaintiff at the time of filing of the suit. In support of his submissions, he relied on **Pandit Malhari Mahale vs. Monika Pandit Mahale**, 2020(2) BOM CR 480 and **Liquidator The Maratha Market People's Co-op Bank Ltd Vs. Jeejaee Estate and Ors**, AIR Online 2019 Bom 37.

4. It is settled legal position that amendments are to be liberally allowed. In **Life Insurance Corporation of India vs. Sanjeev Builders Private Limited and Another**, 2022 SCC OnLine SC 1128, the Apex Court held thus:

"70. Our final conclusions may be summed up thus:

(i)

(ii) All amendments are to be allowed which are necessary for determining the real question in controversy provided it does not cause injustice or prejudice to the other side. This is mandatory, as is apparent from the use of the word "shall", in the latter part of Order VI Rule 17 of the CPC.

(iii) The prayer for amendment is to be allowed

(i) if the amendment is required for effective and proper adjudication of the controversy between the parties, and

- (ii) to avoid multiplicity of proceedings, provided*
- (a) the amendment does not result in injustice to the other side,*
- (b) by the amendment, the parties seeking amendment does not seek to withdraw any clear admission made by the party which confers a right on the other side and*
- (c)"*

5. In the case in hand, the Trial Court has allowed the application of the plaintiff after commencement of trial on the ground that it will avoid multiplicity of proceeding and it will be in the interest of justice to allow the amendment.

6. In my opinion, the Trial Court has rightly exercised discretion in allowing the amendment application and there is no illegality or perversity in the order impugned in the present petition.

7. The Trial Court has observed in the impugned order that the defendant is having opportunity to file amended written statement, even the issues can be recasted and the defendant will also have the opportunity of cross examination.

8. The point of limitation which is addressed by learned advocate for the petitioner is kept open to be agitated before the

Trial Court after the proposed amendment.

9. In Liquidator The Maratha Market (supra), the learned Single Judge of this Court has held that 'there is nothing on record to show that in-spite of due diligence plaintiff failed to file amendment application before commencement of trial', and therefore application for amendment is rejected.

10. In Pandit Mahale (supra), the Apex Court set aside the order of the Trial Court as well as of the High Court allowing amendment as there is no finding by the Court that the Court is satisfied that inspite of due diligence the party could not have raised the matter before the commencement of trial.'

11. In the case in hand though such finding is not recorded by the Trial Court, however, for lack of due diligence, Trial Court has compensated the defendant by awarding costs of Rs. 2,000/- to the defendant. In that view of the matter, this Court is of the opinion that no case is made out by the petitioner to warrant interference in the impugned order in the extra ordinary writ jurisdiction. The writ petition being devoid of merit is dismissed.

[NITIN B. SURYAWANSHI, J.]