

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

941 WRIT PETITION NO.6319 OF 2022

Suresh Ramling Ghongade .. Petitioner

Versus

Ganpat Annasaheb Chavan .. Respondent

...
Mr. Sharad V. Natu, Advocate for Petitioner
Mrs. Anjali Dube (Bajpai), Advocate For Respondent
...

CORAM : NITIN B. SURYAWANSHI, J.

DATE : 14th JUNE, 2023

ORDER :

. This petition is filed under Article 227 of the Constitution of India challenging the order dated 15th December, 2021 passed by the learned 5th Jt. Civil Judge Senior Division, Latur below Exh.36 in Special Civil Suit No. 118 of 2017, thereby rejecting the application filed by the petitioner – plaintiff under Order-VI, Rule-17 read with Section 151 of the Code of Civil Procedure, 1908 (hereinafter, in short, 'C.P.C.').

2. The suit is filed by the petitioner – plaintiff in the year 2015 for recovery of an amount of Rs.18,72,900/- from the respondent – defendant. By filing written-statement, the defendant opposed the suit. Thereafter issues were framed and the petitioner – plaintiff filed his evidence affidavit. Then

application (Exh.36) seeking amendment in the plaint is filed by the petitioner, which is opposed by the defendant. The Trial Court rejected the application for lack of due diligence and by holding that by framing the issues, the trial has already commenced. Hence, the present petition.

3. Heard the learned advocate for the petitioner and the learned advocate for the respondent. Perused the memo of the writ petition, annexures thereto and the impugned order, so also the citations relied upon by the learned advocate for the petitioner.

4. It appears, that the petitioner is trying to explain the admissions given by him in the proceeding under Section 138 of the Negotiable Instruments Act (hereinafter referred to as the 'N.I. Act'). According to the petitioner, he is trying to clarify the events as to when the first cheque was given and subsequent cheque was given. The proposed amendment does not change the nature of the suit and no prejudice is likely to be caused to the defendant if the proposed amendment is allowed.

5. It appears from the record that by way of proposed amendment, the petitioner is trying to explain the admissions

given by him in proceeding under Section 138 of the N.I. Act. The proposed amendment does not change the nature of the suit and no prejudice is likely to be caused to the defendant if the said amendment is allowed. The proposed amendment is necessary for the purpose of determining real question in controversy between the parties.

6. Learned counsel for the petitioner has placed reliance on the judgment in the matter of ***Abdul Rehman and another vs. Mohd. Ruldu and Others, (2012) 11 SCC 341*** wherein the Apex Court has held that, *'amendment of plaint after commencement of trial is permissible if the proposed amendment is necessary for the purpose of determining real question in controversy between the parties and it should be allowed if it does not change the basic nature of the suit.'*

7. In the present case, it is clear from the proposed amendment that it can at the most said to be an explanation given by the petitioner and it does not change the nature of the suit.

8. There appears substance in the argument of the learned counsel for the respondent that there is lack of due diligence on the part of the petitioner in seeking amendment in

plaint. The suit is filed in the year 2015 and the application for amendment is filed in the year 2019. For lack of due diligence, the petitioner is liable to be saddled with costs. In the result, the following order is passed.

ORDER

- (i) Writ petition is allowed.
- (ii) The impugned order dated 15th December, 2021 passed by the learned 5th Jt. Civil Judge Senior Division, Latur below Exh.36 in Special Civil Suit No. 118 of 2017 is quashed and set aside.
- (iii) Application (Exh.36) is allowed subject to the petitioner – plaintiff paying cost of Rs.25,000/- to the respondent – defendant in the Trial Court within two weeks from the date of receipt of the writ of this order.
- (iv) Trial is expedited.
- (v) Parties to co-operate for early disposal of the suit.

**[NITIN B. SURYAWANSHI]
JUDGE**