

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

46 WRIT PETITION NO.13713 OF 2017

M/S RBM CEMENT AGENCY THROUGH ITS PROPRIETOR M D
MODI
VERSUS
RUPESHSINGH ASHOKSINGH CHAUHAN

Mr. Shailendra S. Gangakhedkar, Advocate for the Petitioner.

CORAM : SHARMILA U. DESHMUKH, J.
DATED : FEBRUARY 09, 2023.

PER COURT :

1. Heard.
2. By this petition, the challenge is to the order dated 12th July, 2017 passed by the Trial Court below Exh.46 whereby the petitioner's application for the purpose of correcting the cause title of the plaint by way of application under Order 6 Rule 17 of the Code of Civil Procedure, 1908 came to be rejected.
3. Learned counsel for the petitioner submits that Special Civil Suit No. 25 of 2014 was instituted against the respondent, who was the proprietor of a firm under the name and style as 'Isha Construction'. He has invited attention of this Court to paragraph No.3 of the plaint, wherein specific assertion is made that the respondent is carrying on business under the name and style as "Isha Construction" and Respondent is proprietor of the said firm.

4. The application for amendment of the plaint has been rejected by the trial Court on the ground that the trial has commenced and the petitioner had knowledge about the proprietorship of the Respondent at the time of filing of the suit and has failed to show that inspite of due diligence, he could not have raised the matter in respect of the proprietorship before the commencement of the trial.

5. In Special civil Suit No.25 of 2014, the respondent has been impleaded in his individual name and it has been pleaded that he is the proprietor of the firm known as “Isha Construction”. This fact has also been admitted by the respondent in his written statement and even in the cross-examination, the petitioner has deposed that the respondent is the proprietor of the firm Isha Construction and has been impleaded as proprietor. It is settled that the proprietorship firm is not a distinct and separate legal entity and the proprietor and the proprietorship firm are one and the same.

6. By this present application, the petitioner seeks to correct the description in the cause title which fact is not in dispute. It also cannot be said that the said correction is now being warranted to fill in the lacuna in the cross-examination as the petitioner has specifically deposed in the cross-examination that the respondent is the proprietor of Isha Construction. The proviso to Order 6 Rule 17 applies to the post trial amendment. However, in the present case, what is sought to be corrected is the description in

the cause title which is covered by provision of Order 1 Rule 10 (2) of the Code. Considering that there is no amendment in the body of the plaint and the correction was sought in the description in the cause title, in my opinion, the amendment is required to be allowed.

7. In light of the facts above, the Petition succeeds. The impugned order dated 12th July, 2017 is quashed and set aside.

(SHARMILA U. DESHMUKH, J.)