

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 11334 OF 2019

Kishor Anand Mane.

...Petitioner.

Versus

Vijay Appasaheb Chavan

Deceased through Heirs

A. Minakshi Vijay Chavan and Others.

..Respondents.

Mr. R. B. Huded and Mr. M. V. Chavan for the Petitioner.

Mr. Padmanabh D. Pise for the Respondents.

Coram : Sharmila U. Deshmukh, J.

Date : March 23, 2023.

P. C. :

1. The petition challenges the order dated 20th March 2019 passed by the trial Court allowing the respondent-defendant's application for the amendment of written statement.

2. Regular Civil Suit No.146 of 2012 was instituted by the petitioner herein seeking possession of the subject property, which according to the petitioner was rented to one Ram Bhosale and the respondent, who claims to be the nephew of said Ram Bhosale, started to occupy the said property. It is the case of the petitioner that the respondent has no

authority to remain in possession of the said property, and as such the suit (RCS No.146 of 2012) came to be instituted. In the year 2019, an application for amendment of written statement came to be filed by the respondent seeking incorporation of paragraph 7A, which reads thus :

“७अ) दावा मिळकतीमध्ये या प्रविवादींचा सन १९८७ पूर्वी पासून भाडेकरु हक्काने कब्जा आहे. तथापी या वादींनी प्रस्तुतचा दावा मालकी वरुन कब्जा मिळणेसाठी दाखल केलेला आहे तो दावा मुदतीत नसलेने कायद्याने चालू शकत नाही तो दावा रद्दबातल होणेस पात्र आहे.”

3. Heard learned counsel for the parties. Learned counsel for the petitioner submits that in the present case, the affidavit of evidence was filed on 27th November 2015 and in the year 2019, application for amendment of the written statement is filed, which does not comply with the requirement of the proviso to Order VI Rule 17 of the Code of Civil Procedure, 1908 [for short “**CPC**”]. In support of his submission, learned counsel for the petitioner relied upon the decision of Apex Court in **Pandit Malhari Mahale v. Monika Pandit Mahale [(2020) 11 SCC 549]**, **Vidyabai v. Padmalatha [(2009) 2 SCC 409]** and **Chander Kanta Bansal v. Radinder Singh Anand [(2008) 5 SCC 117]**.

4. *Per contra*, learned counsel appearing for the respondents

submits that the power (to grant amendment) is a discretionary power and can be exercised at any stage of the proceeding. He further submits that there is no prejudice which has been caused to the petitioner by allowing the application for amendment of written statement, and the same is compensated by imposition of cost. He would further submit that by the proposed amendment, the issue of limitation is being raised. In support of his submission, learned counsel appearing for the respondents relied upon decision of the Apex Court in ***Life Insurance Corporation of India v. Sanjeev Builders Private Limited [AIR 2022 SC 4256]***.

5. It is well settled that amendments to the pleadings are to be liberally allowed. However, the proviso to Order VI Rule 17 of CPC circumscribes powers of the Court to allow a post-trial amendment unless the requirements of the said proviso are met. In the present case, admittedly, the affidavit of evidence has been filed in the year 2015 and in the year 2019, an application for amendment raising an issue of limitation is filed by the respondent. Perusal of the said application, which is at page 20 to the petition, shows that there is no averment that the issue which is sought to be raised by way of proposed amendment was not within the knowledge of respondent (defendant) or could not be, in spite

of due diligence, raised before the commencement of trial. On the other hand, it has been the consistent case of the respondent that he is in possession of the suit premises as a tenant and as such the application does not set out the reason why the said issue of limitation could not have been raised prior to the commencement of trial.

6. The purpose of amendment to the CPC, incorporating the proviso to Order VI Rule 17, is to minimize the delay in trial and ensure all the issues are raised at the relevant time.

7. As far as the decision in LIC v. Sanjeev Builders (supra) which has been relied upon by learned counsel appearing for the respondent is concerned, there is no quarrel with the proposition that the amendments are to be liberally allowed. It would be worthwhile to note the guidelines set out in the said decision, in particular guideline No.(XI), which reads thus :

"Where the amendment is sought before commencement of trial, the Court is required to be liberal in its approach. The Court is required to bear in mind the fact that the opposite party would have a chance to meet the case set up in amendment. As such, where the amendment does not result in irreparable prejudice to the opposite party, or divest party of an advantage which it has secured as a result of an admission by the party seeking amendment, the

amendment is required to be allowed. Equally, where the amendment is necessary for the Court to effectively adjudicate on the main issues in controversy between the parties, the amendment should be allowed."

. Learned counsel appearing for the respondent has not been able to demonstrate that the Apex Court in LIC v. Sanjeev Builders (supra) was dealing with the case of post-trial amendment and in the context of that matter, has permitted the amendments to be carried out which do not meet the requirements of Order VI Rule 17 of CPC.

8. The decisions relied upon by learned counsel for the petitioner are squarely applicable to the facts of the present case inasmuch as the Apex Court in Pandit Mahale (supra) has specifically held that while dealing with the post-trial amendment, there has to be a finding that in spite of due diligence, the party could not raise the matter before commencement of the trial. In the present case, the perusal of the impugned order does not show any such satisfaction being recorded by the trial Court.

9. In my opinion, considering the decision of the apex Court relied upon by learned counsel for the petitioner, which are squarely applicable to the facts of the present case, the impugned order is clearly

unsustainable. It would be worthwhile to note that permitting the amendment would result in framing of additional issue of limitation which would set the clock back and put the trial to the stage of framing of issues, which is precisely what is sought to be dissuaded by virtue of the enactment of proviso to Order VI Rule 17 of CPC.

10. In the light of above, the petition succeeds. The impugned order is hereby quashed and set aside.

[Sharmila U. Deshmukh, J.]