

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.5339 OF 2022

Shri Shashikant Narayan Bhutkar ... Petitioners
since deceased thr. Lrs.
Manohar Shashikant Bhutkar and ors

vs.

Shri Chintamani Keshav Veerkar and ors ... Respondents

Mr. Sugandh Deshmukh a/w Mr. Irwin D'souza for Petitioners.

Mr. Pradeep J. Thorat for Respondent Nos.1 to 3, 4A and 4D.

CORAM : SANDEEP V. MARNE, J.

DATED : 25 JANUARY, 2023

P.C. :-

1. By this Petition, Petitioners assail Order dated 26 June 2019 passed by the Second Joint Civil Judge Junior Division thereby allowing application of Defendant No.1F seeking permission to file additional written statement under Order 8 Rule 9 of Civil Procedure Code, 1908 ("**Code**").

2. Mr. Deshmukh, the learned counsel appearing for Petitioners would raise essentially four objections to the impugned order:

- (i) Firstly, he would contend that Defendant Nos.1A, 1D, 1F had filed pursis on 2 May 2014 adopting the

written statement filed by Defendant No.1. Having filing such a pursis, Defendant Nos.1F is now estopped from seeking leave to file an additional written statement.

- (ii) Secondly, he would contend that all events that are sought to be brought on record by way of additional written statement took place during the life time of Defendant No.1, who himself did not bother to bring them on record.
- (iii) Thirdly, he would contend that there is inordinate delay in filing an additional written statement, as Defendant No.1 expired on 21 June 2013 whereas the application seeking permission to file an additional written statement was filed on 20 June 2018.
- (v) Lastly Mr. Deshmukh would contend that Defendant Nos.1H and 1(I) had filed written statement raising same contention which is sought to be raised in the additional written statement by Defendant Nos.1F and on an application made by Petitioners, the trial Court has struck-off such contentions from their written statement. Once Defendant No.1H and 1(I)

are not permitted to raise the contentions, Defendant No.1F cannot, by a sidewind, bring them on record through additional written statement.

3. Mr. Thorat, the learned counsel appearing for Respondents would oppose the Petition and support the order passed by the Trial Court. He would contend that the Trial Court was apprised of the fact that Defendant No.1D alone was looking after the affairs of the Suit after demise of Defendant No.1 and it was Defendant No.1D who was instrumental in filing the pursis dated 2 May 2014. Defendant No.1F has a special child, on account of which he was unable to devote adequate time to defend the Suit properly. On the issue of delay in filing an additional written statement, he would rely upon the judgment of Apex Court in *Olympic Industries Versus Mulla Hussainy Bhai Mulla Akberallys and others*¹. On objection of striking-off certain paragraphs in the written statement filed by Defendant Nos.1H and 1(I), Mr. Thorat would contend that the contentions raised in those paragraphs are entirely different than one sought to be raised in the additional written statement filed by Defendant No.1F.

¹(2009) 15 SCC 528

4. Rival contentions of the parties now fall for my consideration.

5. So far as the first objection of Mr. Deshmukh is concerned, the same is adequately dealt with by Mr. Thorat by contending that the pursis was filed essentially at the instance of Defendant No.1D who was looking after the affairs of the Suit after death of Defendant No.1. The Trial Court has also taken into consideration the medical record produced by Defendant No.1F in support of her contention regarding requirement to take care of special child. Therefore, merely because a joint pursis was filed by Defendant No.1A, 1D and 1F adopting written statement of Defendant No.1, it cannot be stated that Defendant No.1F would be precluded from seeking permission to file an additional written statement subsequently.

6. So far as the second contention of Mr. Deshmukh is concerned, even though events occurring during lifetime of Defendant No. 1 are sought to be brought on record by way of an additional written statement, the fact remains that they are

not reflected in the written statement filed by Defendant No.1. No error can be said to be committed by the Trial Court by permitting the such events being brought on record in the form of an additional written statement, which Defendant No. 1F is otherwise entitled to file after being added as legal heir of defendant no. 1, but for the joint pursis filed by her. The issue of pursis is already dealt with above.

7. The third objection of delay raised by Mr. Deshmukh also does not cut any ice as the Apex Court has held in *Olympic Industries* (supra) that the delay cannot be ground on the basis of which filing of additional written statement can be denied. In paragraphs 10, 15 and 18, the Apex Court has held as under;

10. So far as this ground is concerned, we do not find that delay is a ground for which the additional counter-statement could not be allowed, as it is well settled that mere delay is not sufficient to refuse to allow amendment of pleadings or filing of additional counter-statement. At the same time, delay is no ground for dismissal of an application under Order 8 Rule 9 of the Code of Civil Procedure where no prejudice was caused to the party opposing such amendment or acceptance of additional counter- statement which could easily be compensated by costs. That apart, the delay in filing the additional counter-statement has been properly explained by the appellant.

15. It is also well settled that the courts should be more generous in allowing the amendment of the counter-statement of the defendant than in the case of plaintiff. The High Court in its impugned order has also observed that in order to file an additional counter-statement, it would be open to the defendant to take inconsistent plea. The prayer for acceptance of the additional counter-statement

was rejected by the High Court on the ground that while allowing such additional counter-statement to be accepted, it has to be seen whether it was expedient with reference to the circumstances of the case to permit such a plea being put forward at that stage.

18. It is also well settled that while allowing additional counter-statement or refusing to accept the same, the court should only see that if such additional counter-statement is not accepted, the real controversy between the parties could not be decided. As noted hereinafter, by filing an additional counter-statement in the present case, in our view, would not cause injustice or prejudice to the respondents but that would help the court to decide the real controversy between the parties. In our view, the High Court was, therefore, not justified in rejecting the application for permission to file additional counter-statement as no prejudice could be caused to the respondent which would otherwise be compensated in terms of cost.

8. Last submission of Mr. Deshmukh that Defendant No.1F is attempting to bring on record contentions which have been struck off from the written statement of Defendant Nos.1H and 1(I) also does not hold water. I have gone through the reliefs sought in paragraphs in written statement of Defendant No.1H and 1(I) which were directed to be struck off by the order of the Trial Court dated 23 March 2018. I find that Defendant No.1H and 1(I) had raised few allegations against Plaintiffs in those paragraphs which were directed to be deleted. As against this, what is sought to be brought on record by way of additional written statement of Defendant No.1F are essentially subsequent events that have been taken place during pendency of the Suit. Last submission of Mr.Deshmukh therefore does not deserve acceptance.

9. Resultantly, I do not find any error being committed by the Trial Court in passing the impugned order as findings recorded by it do not suffer from perversity. Writ Petition is devoid of any merits and the same is dismissed without any order as to costs.

(SANDEEP V. MARNE, J.)