

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****WRIT PETITION NO. 11958 OF 2016**

Shivgonda Anna Patil, since deceased

Through his Legal Heirs

....Petitioners

V/s.

Balu Aaba Kamble, since deceased

Through his Legal Heirs

....Respondents

--

Mr. Shrikrishna R. Ganbavale, for the Petitioners.

CORAM : SANDEEP V. MARNE, J.

Dated : August 18, 2023.

P.C. :

1. By this petition, Petitioners challenge two orders, both passed on September 1, 2016 by which the Trial Court has allowed applications of Defendants no.4 and 5 (Exhibit-127), Defendants no.1(a)(2), 1(a)(3), 1(b)(3), 1(b)(4), 1(b)(5), 3(b)(1), 3(b)(2) and 3(c)(1) (Exhibit-137), as well as of Defendant no.2(a)(2) (Exhibit-146) filed for amending the respective Written Statements.

2. Mr. Ganbavale, the learned counsel appearing for Petitioners would raise an objection to the impugned orders on the ground that the amendments were sought to be introduced after

commencement of the trial and in view of the provisions of Order 6 Rule 17 of the Civil Procedure Code (**Code**), there is a specific bar for amendment of pleadings after commencement of the trial. He would further submit that the main reason cited by the concerned Defendants to amend their respective Written Statements was finalisation of proceedings in respect of Regular Civil Suit No. 204/1998. That the relief claimed in the said Regular Civil Suit No. 204/1998 was entirely different and that the said suit has absolutely no connection with the present suit. He would submit that by the time of filing of amendment applications, issues in the suit were framed and the plaintiff had filed his Affidavit of evidence and that therefore the Trial Court could not have allowed the amendments especially in view of the fact that the Defendants failed to exhibit due diligence in applying for amendments.

3. I have considered the submissions advanced by the learned counsel appearing for the Petitioners and have also gone through the orders dated September 1, 2016. By the time the application for amendment was filed, the Trial Court had already framed issues and the Plaintiff filed his Affidavit of evidence on December 31, 2007. However the Trial Court has taken note of various events that have occurred after December 31, 2007. It appears that after filing his Affidavit of evidence on December 31, 2007, the Plaintiff applied on August 22, 2008 for leave to withdraw and de-exhibit the Affidavit of examination-in-chief. His

application was rejected by the trial Court by order dated April 12, 2010. However thereafter Plaintiff's cross-examination could not commence on account of various other eventualities. The Defendant filed application at Exhibit-95 for impounding the disputed agreement for sale, which was rejected by order dated June 17, 2010. The Plaintiff thereafter produced original Power of Attorney alongwith Certificate of Medical Practitioner and filed Affidavit of evidence of the Power of Attorney Holder on September 4, 2010. He filed Affidavit of evidence of one more witness. In the meantime, one Dilip Bhau Kamble filed application for impleadment in the suit on December 2, 2010 which was allowed by the Trial Court on January 6, 2011. The plaint was accordingly amended and an opportunity was granted to the added Defendant for filing his Written Statement. In the meantime, Plaintiff was required to bring on record legal representatives of Defendant no.1(c). It is on account of the above events, the cross-examination of plaintiff, who had filed Affidavit of evidence on December 31, 2007 could not commence till various Defendants filed their applications for amendment of their respective Written Statement.

4. Thus, though the Plaintiff had filed his Affidavit of examination-in-chief on December 31, 2007 and was unsuccessful in his attempt to withdraw the same, his cross-examination could not commence by the time the applications for amendment of

Written Statement were filed. The Trial Court has relied upon the judgment of the Apex Court in **Baldev Singh Vs. Manohar Singh**, 2005 (5) Mh.L.J. 634 in which it is held that the term 'commencement of trial' used in Proviso to Order VI, Rule 17 of the Code, must be understood in the limited sense of final hearing of the suit. Relying upon the said judgment, the Trial Court has arrived at a finding that though issues were framed and Affidavit of evidence was filed by the Plaintiff, the suit was actually not taken up for final hearing on account of occurrence of various eventualities during the years 2007 to 2015. Plaintiff himself has to be blamed partially for delay caused in his own cross-examination by filing application for withdrawal of Affidavit of evidence on August 22, 2008 and thereafter filing Affidavits of evidence of added witnesses.

5. It is not the case of the Petitioners that amendments sought to introduce a new case or sought to withdraw any admission already given by the Defendants. The main grouse in respect of the impugned order is with regard to the alleged failure on the part of the Defendants to show due diligence as required under Proviso to Order VI Rule 17 of the Code. Considering the progress of the suit between the years 2007 to 2015 (during which period practically no progress took place in the suit), I am of the view that the Trial Court has not committed any manifest error in allowing the applications for amendment of Written Statements

which would warrant interference by this Court in exercise of jurisdiction under Article 227 of the Constitution of India. The Trial Court has imposed costs on the Defendants for delay in filing applications for amendment.

6. No case is made out for interference by this Court in the impugned orders. Writ Petition being devoid of merits is **dismissed** without any orders as to costs.

SANDEEP V. MARNE, J.