

Ajay

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 993 OF 2019

M/s. Sangmeshwawr Trading Company General
Merchant & Commission Agent .. Petitioner

Versus

M/s. Vyankatesh Farming through
Partner Laxman Gunaji Narvekar .. Respondent

WITH

WRIT PETITION NO. 994 OF 2019

M/s. Sangmeshwawr Trading Company General
Merchant & Commission Agent .. Petitioner

Versus

M/s. Vyankatesh Farming through
Partner Laxman Gunaji Narvekar .. Respondent

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- Mr. Vijay Killedar, Advocate for Petitioner.
 - Mr. Padmanabh Pise, Advocate for Respondent.
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CORAM : MILIND N. JADHAV, J.

DATE : JANUARY 24, 2023.

P.C.:

1. Heard Mr. Killedar, learned Advocate appearing for Petitioner and Mr. Pise, learned Advocate appearing for Respondent for some time.

2. The impugned order dated 10.12.2018 has been passed below Exhibit-64 filed by Plaintiff seeking amendment of the plaint. The amendment was to be effect that Plaintiff had filed an earlier Suit namely Special Civil Suit No.108 of 2015 and the same was withdrawn

on 09.03.2017 with specific condition to file a new Suit. The issue for withdrawal was necessitated in view of the fact that the registration of Plaintiff's firm was effected on 28.03.2016 i.e. subsequent to the filing of the earlier Suit and in view of the express bar under the Indian Partnership Act, Plaintiff sought liberty which was granted by the learned Trial Court. Accordingly, the fresh Suit was instituted on 13.03.2017.

3. The written statement was filed by Defendant on 22.09.2017. Thereafter an Application seeking amendment of the written statement was filed on 25.09.2018. Pursuant to which an additional issue of limitation came to be framed by the learned Trial Court on 08.10.2018. By order dated 28.09.2018 passed below Exhibit-59 amendment of the written statement was allowed to the Defendant.

4. In view of the specific order dated 09.03.2017 passed by the learned Trial Court allowing Plaintiff to withdraw the earlier Suit and more specifically in view of the specific averment of the Plaintiff in the present suit i.e. Special Civil Suit No.70 of 2017 in paragraph No.7, there was no reason for the learned Trial Court to reject the Application filed by the Plaintiff below Exhibit-64 and the said Application ought to have been allowed.

5. I have perused the Suit plaint and paragraph No.7 thereof. There is a specific reference made to the filing of the earlier Suit i.e. Special Civil Suit No.108 of 2015 by the Plaintiff and the withdrawal of the same with the permission of the Court on the condition granted and allowed by the Court.

6. In that view of the matter, the order passed below Exhibit-64 dated 10.12.2018 cannot be sustained and the said order deserves to be set aside. The order dated 10.12.2018 is quashed and set aside.

7. In view of the above order, dated 28.09.2018 pursuant to which the additional issue of limitation has been framed on 08.10.2018 is also set aside. Needless to state that the said issue shall be determined by the Trial Court as a mixed question of fact and law if called upon to be framed by either party and strictly in accordance with law. Both parties are at liberty to file appropriate application for framing of the issue of limitation.

8. All the contentions of both the parties are expressly kept open before the learned Trial Court.

9. With the above directions, both the Writ Petitions are disposed of.

[MILIND N. JADHAV, J.]

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