

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.4603 OF 2022

Suresh Pandurang Bhokare ... Petitioner
Versus
Dr. Arun Pandurang Bhokare and Ors. ... Respondents

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Mr. Sarang S. Aradhya with Ms. Gauri Virankar, Ms. Shruti Kothawade, Mr. Shantanu Gurav for the Petitioner.
Mr. Amol B. Jagtap for Respondents.

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CORAM : SHARMILA U. DESHMUKH, J.

DATE : June 22, 2023.

P. C. :

1. Vide order dated 25th February, 2022, the learned Civil Judge, Senior Division, Solapur has permitted amendment of written statement at the stage of final arguments.

2. Heard Mr. Aradhya for Petitioner and Mr. Amol Jagtap for Respondent.

3. Mr. Aardhya submits that the application for amendment of the written statement being filed at the stage of final arguments, is hit by the proviso to Order 6 Rule 17 of the Code of Civil Procedure,

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1908 (for short, "CPC"). He has pointed out from the written statement filed by the respondent-defendant in the proceedings that the earlier proceedings viz. RCS No.649 of 2013, was within the knowledge of the respondent-defendant and in spite thereof there was no objection raised on the ground of Order 2 Rule 2 of the CPC. He would further submit that the proviso to Order 6 Rule 17 is very clear and the application does not make out any case that in spite of due diligence, the matter could not be raised before commencement of trial.

4. To counter the submissions, Mr. Jagtap contends that all amendments which are necessary for deciding the controversy in issue are to be allowed. He would further submit that in the written statement the objection as to the forged agreement of sale is already taken and that being so, the proposed amendment raising the issue of Order 2 Rule 2 is a legal argument as to jurisdiction and goes to the root of the matter. In support of his contentions, he relies upon the decision of the Apex Court in the case of ***Life Insurance Corporation of India vs. Sanjeev Builders Private Limited and Another***, [2022 SCC OnLine SC 1128], and in particular paragraph 17 of the said decision to substantiate his submission that the delay in applying for the amendment alone is not a ground to disallow the prayer.

5. Although, the papers of the present proceedings were not placed before this Court by the Registry, as the matter in the Trial Court was at stage of final arguments, a copy of the petition was tendered by the parties and the matter was heard upon insistence of the parties.

6. Special Civil Suit NO 162 of 2013 was instituted by the Petitioner-Plaintiff on 14th October, 2013 *inter alia* seeking cancellation of the sale deed no 7145/2013 and for direction to the Respondent No 1 to accept the balance consideration and execute the sale deed in his favour as per the agreement to sell. The written statement was filed by the Respondent No 1 on 9th April, 2014. Paragraph 7 and 8 of the written statement refers to the earlier suit i.e. RCS NO 649 of 2013 and it is the defense of the Respondent No 1 that the agreement to sell is forged. The application for amendment of written statement was filed on 22nd February, 2022 stating that there is objection in the written statement on ground of maintainability, however specific averment on technical ground of Order 2 Rule 2 has not been stated. Upon perusal of the written statement there is no pleading raising objection to the maintainability of the suit in view of the earlier suit.

7. It is not disputed that the application for amendment of the written statement has been filed at the stage of the final arguments. The settled position in law is that all amendments which are necessary for the effective adjudication of the dispute are to be liberally allowed. However, by legislative mandate a proviso to Order VI Rule 17 has been incorporated, which lays down some fetters on the powers of the court to allow the amendment. The proviso to Order 6 Rule 17 apply in equal force to the amendment of the plaint as well as the written statement. It would be beneficial to reproduce the provisions of Order 6 Rule 17 of the CPC, which reads thus:

“17. Amendment of pleadings.- The Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties:

Provided that no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial.”

8. Usually, an application for amendment to a written statement is to be considered liberally than an application for

amendment of plaint as the issue of prejudice is diluted. However, the position differs according to the facts of each case. In the present case, the application for amendment of written statement has come at the stage of the final arguments. The application for amendment, which is annexed at page 69 of the petition states that the objection of maintainability of suit as provided under Order 2 Rule 2 being technical and legal could not be noticed and raised despite due diligence by the defendants before commencement of trial. There is no averment as to why the said fact being within the knowledge of the defendant was not raised earlier. The application appears to have been made in a casual manner without satisfying the requirement of Order VI Rule 17 of the CPC. In my opinion, it cannot be said that inspite of due diligence the matter could not have been raised earlier.

9. As indicated above, there is no pleading as regards the maintainability of the suit. The Trial Court has referred to paragraph 10 of the written statement, however upon perusal of the said paragraph it is clear that there is no objection raised therein on ground of maintainability. The issue of maintainability goes to the root of the matter and requires an issue to be framed. The suit is at the stage of final arguments. It is required to be noted that at-least to

this Court it has not been pointed out that any such issue as regards the maintainability has been framed. To allow the amendment at this stage, in my opinion, would amount to setting clock back, inasmuch as the issue regarding the maintainability of the proceedings in view of the provisions of Order II Rule 2 will have to be framed and evidence will have to be led. The contentions of the learned counsel for the Respondent that the arguments of the Respondent are over and the matter is kept for final arguments of the Petitioner and, as such, no interference is warranted at this stage, is liable to be rejected.

10. It cannot be lost sight of that by way of proposed amendment, the trial Court has permitted an objection to be raised on the ground of maintainability, which objection at this stage would cause grave prejudice to the Petitioner, who will not be able to deal with the issue at the time of the final arguments, without putting necessary pleadings on record. Considering the admitted position about the knowledge of the respondent-defendant about the earlier proceedings i.e. RCS No.649 of 2013 being filed and also finding mention in the written statement filed by the Petitioner, the amendment at the stage of the final arguments without setting out

any reasons complying with the provisions of the proviso to Order 6 Rule 17, deserves to be dismissed.

11. In view of the above, by allowing the proposed amendment at this stage would amount to a violation of the provisions of Order 6 Rule 17 of the CPC, and as such, the impugned order dated 25th February, 2022 is quashed and set aside.

12. Writ Petition stands allowed.

13. All parties to act on the authenticated copy of this order.

(Sharmila U. Deshmukh, J.)