

HARSHADA H. SAWANT
(P.A.)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.3580 OF 2022

Vikash Tolaram Chudiwala and Ors .. Petitioners
Versus
Manish Jhunhunwala .. Respondent

- Mr. Asim Naphade i./by Mr. Yatin R. Shah for Petitioners

CORAM : MILIND N. JADHAV, J.

DATE : JANUARY 21, 2023

P.C.:

1. Heard Mr. Naphade, learned Advocate for Petitioners.
2. Perused the impugned order dated 03.09.2021 passed below Exh.4 in Summary Suit No.8044 of 2001 which is at Page No.65 of the Writ Petition.
3. Mr. Naphade would contend that the Plaintiff (Respondent herein) in the suit sought to amend the suit plaint and presented a schedule for amendment in Chamber Summons No.217 of 2018 which is reproduced below:

“1) Add the names in the cause title of the Plaint of the following persons, as the Defendants :-

*A) Vikash Tolaram Chudiwala
Residing at 6/B, Rizvi Park, ‘D’ Raj Lane,
Altamount Road, Mumbai – 400 026.*

*B) Mrs. Vibha Dipak Agarwalla,
Residing at 2, Buckley Court, 5 Wode House
Road, Colaba, Mumbai – 400 031.*

*C) Mrs. Vidhi Atul Maheshwar
Residing at Madhav Vilas, 2nd Floor, Setawad
Lane, Nepeansea Road, Mumbai – 400 036.*

2) Consequential amendments in the Plaint.”

4. He would contend that the learned Trial Court allowed the said schedule with the consent of the Petitioners (Defendants in the suit). Admittedly, the Defendants were not aware about the details of the consequential amendments in the plaint as stated in the Item No.2 above and had given their No-Objection.

5. Mr. Naphade would contend that they had infact given their No-Objection for bringing the legal heirs of deceased Defendants on record and nothing more as they were not aware about the consequential amendments in the plaint.

6. After carrying out amendment it was realised by the Petitioner that amendment which was carried out by the Petitioner was beyond what is stated in the Affidavit-in-Reply to the Chamber Summons dated 30.01.2018 and therefore they applied for striking of the additional amendment.

7. The Learned Trial Court after examining the issue passed the impugned order dated 03.09.2019 holding that it could not be said that the Defendants were not aware about the reliefs sought against them by the Plaintiff and none of the rights of the Defendants are curtailed by the virtue of the amendment carried out by the Plaintiffs or that they are prejudiced by the same.

8. *Prima facie* without giving the opportunity to the Defendants to meet the amendment i.e. consequential amendment which was not placed before the learned Trial Court in the first place itself by the

Defendants, the finding returned by the learned Trial Court in its order dated 03.09.2019 are not sustainable.

9. Mr. Naphade referred and relied on the judgment of **Gurdial Singh and Ors. V/s. Raj Kumar Aneja and Ors.** and more specifically paragraph No.13 thereof which reads thus:

“13. Before parting we feel inclined to make certain observations about the loose practice prevalent in the subordinate courts in entertaining and dealing with applications for amendment of pleadings. It is a disturbing feature and, if such practice continues, it is likely to thwart the course of justice. The application moved by the occupants for amendment in their written statements filed earlier did not specifically set out which portions of the original pleadings were sought to be deleted and what were the averments which were sought to be added or substituted in the original pleadings. What the amendment applicants did was to give in their applications a vague idea of the nature of the intended amendment and then annex a new written statement with the application to be substituted in place of the original written statement. Such a course is strange and unknown to the procedure of amendment of pleadings. A pleading, once filed, is a part of the record of the court and cannot be touched, modified, substituted, amended or withdrawn except by the leave of the court. Order 8 Rule 9 CPC prohibits any pleadings subsequent to the written statement of a defendant being filed other than by way of defence to a set-off or counterclaim except by the leave of the court and upon such terms as the court thinks fit. Section 153 CPC entitled “General power to amend” provides that the court may at any time, and on such terms as to costs or otherwise as it may think fit, amend any defect or error in any proceeding in a suit; and all necessary amendments shall be made for the purpose of determining the real question or issue raised by or depending on such proceeding. Order 6 Rule 17 CPC confers a discretionary jurisdiction on the court exercisable at any stage of the proceedings to allow either party to alter or amend his pleadings in such manner and on such terms as may be just. The Rule goes on to provide that all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties. Unless and until the court is told how and in what manner the pleading originally submitted to the court is proposed to be altered or amended, the court cannot effectively exercise its power to permit amendment. An amendment may involve withdrawal of an admission previously made, may attempt to introduce a plea or claim barred by limitation, or, may by lapse of time and so on. It is, therefore, necessary for

an amendment applicant to set out specifically in his application, seeking leave of the court for amendment in the pleading, as to what is proposed to be omitted from or altered or substituted in or added to the original pleading.”

10. Ideally the party is required to be put to notice of any substantive amendment that is carried out and the party cannot be taken by surprise subsequently.

11. Considering that the consequential amendment was not described by the Defendants in the schedule of amendment itself which is appended to the Chamber Summons, there was an inherent mistake committed by the learned Trial Court in not only allowing the same but also confirming the same without giving an opportunity to the Plaintiff to meet the same.

12. In view of the above, the order dated 03.09.2019 passed below Exh.4 is not sustainable and is quashed and set aside. Needless to state that Plaintiff shall be at liberty to file fresh Chamber Summons seeking an appropriate amendment, describing the same, and if the same is so filed, the learned Trial Court shall decide the same on its own merits and in accordance with law.

13. In view of this order, the additional amendment allowed by the Trial Court is directed to be struck off.

14. With the above directions, Writ Petition is disposed.

[MILIND N. JADHAV, J.]

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