

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 875 OF 2022

Mahesh S. Jadhav and anr.

.. Petitioners

V/s.

Sunanda R. Katkar

.. Respondent

...

Mr. Suryajeet P. Chavan i/by. One Legal Bay LLP, Advocate for the Petitioners.

Mr. Kishor G. Pashte, Advocate for the Respondent.

...

CORAM : SANDEEP V. MARNE, J.

DATED : JULY 28, 2023.

P.C. :

1. By this petition, Petitioners/Defendants challenge order dated November 19, 2021 passed by the Civil Judge, Senior Division, Vita thereby allowing Plaintiff's application for amendment in the plaint.

2. The Respondent/Plaintiff has instituted Regular Civil Suit No. 331/2020 seeking declaration of termination of partnership deed allegedly executed between the Plaintiff and Defendant. It is Plaintiff's case in the plaint that the partnership commenced on October 23, 2006 and in pursuance of

commencement of such partnership, a partnership deed was executed on November 6, 2006. In paras-1 and 7 of the plaint, the Plaintiffs made specific averments to the effect that the partnership deed was executed on November 6, 2006. However, it appears that at two places in the plaint, viz paras-6 and prayer clause (b), the date of the partnership deed was stated as 'November 6, 2011' instead of 'November 6, 2006'. The limited amendment that the Petitioners-Plaintiffs sought in the plaint was to correct the error in describing the date of partnership deed in para-6 and prayer clause (b) of the plaint.

3. The learned Counsel for the Petitioners would submit that the amendment application was moved after arguments in the suit had commenced. He would take me through the rojnama of the suit which shows that the suit was closed for arguments on August 3, 2019. Thereafter, the Defendant completed arguments on December 12, 2019. The Plaintiffs commenced their arguments on December 18, 2019. It appears that the suit was adjourned from time to time for filing of written arguments. At such a belated stage, application for amendment was filed on March 30, 2021. The Learned Counsel for the Petitioners would submit that since application for amendment was filed not only after the trial had commenced but at a stage where the arguments in the suit were virtually completed, the Trial Court ought to have rejected the amendment application. His next submission is that the amendment was not of formal nature as held by the Trial

Court. He would submit that the Defendant has disputed any partnership between the parties. That the Written Statement is filed by the Defendant by taking the date of partnership as 'November 6, 2011' and now the Plaintiff cannot be permitted to change the date of partnership deed at a stage where the suit was to be disposed of by considering the arguments advanced by both the sides.

4. *Per-contra*, the learned Counsel for the Respondent would submit that the amendment is of a formal nature as the Plaintiff had correctly described the date of partnership deed as 'November 6, 2006' at two places in the plaint.

5. I have considered the submissions canvassed by the learned Counsel for the parties. The amendment application filed by the Plaintiff was only for the purpose of correction of the date of partnership deed from 'November 6, 2011' to 'November 6, 2006' as mentioned in para-6 and prayer clause (b) of the plaint. As observed above, the Plaintiff had correctly stated the date of partnership deed as 'November 6, 2006' in paras-1 and 7 of the plaint. For convenience, the pleadings in paras-1 and 7 of the plaint, are reproduced below.

“१) यातील वादी या भाकुचीवाडी, ता. खानापूर, जि. सांगली येथील रहिवासी आहेत. वादीचे पती श्री. रेवणसिध्द उर्फ सिध्देश्वर आणि वादीची मुले धनाजी व संतोष हे परराज्यात सोनेचांदी गाळण्याचा व्यवसाय करतात. विटा येथे सराफी व्यवसायात भागिदारीमध्ये गुंतवणूक करण्याची वादीची होती. यातील प्रतिवादी क्रं. १ व २ हे वादीचे नातेवाईक आहेत आणि उभयता प्रतिवादींनी

वादींकडे अशी इच्छा व्यक्त केली की वादी व प्रतिवादी यांनी एकत्रात भागिदारीमध्ये विटा येथे ज्वेलरीचे दुकान सुरु करावे आणि त्यासाठी उभयतामध्ये रितसर भागिदारी पत्रही करणेचे ठरले. वादी व प्रतिवादी यांनी ‘मे. सिध्दीविनायक ज्वेलर्स, विटा’ या नांवे भागिदारी फर्म (पेढी) स्थापन करण्याचे ठरविले आणि विटा येथे किस्मत कॉम्प्लेक्सचे बेसमेंटमधील पूर्व २३. १०.२००६ मध्ये भागिदारीत व्यवसाय सुरु केला आणि सदर भागिदारीच्या वादी व प्रतिवादी मध्ये ठरलेल्या शर्तीअटी दिनांक ६.११.२००६ रोजी रु.१००/- गैरन्यायिक मुद्रांकावर वादी व प्रतिवादीचेमध्ये ठरलेनुसार लिहून ठेवणेत आल्या. सदर वेळी साक्षीदार अवधूत रामा पवार व प्रताप श्रीमंत मोहिते हे हजर होते आणि वादी व प्रतिवादी मध्ये झालेले सदर नमूद अस्सल भागिदारी पत्र या दावेसोबत फेरिस्तने अनुक्रम नं. १ कडे दाखल केले आहे.

(७) सदर दावेस नमूद केलेले कारण या मे. कोर्टाचे स्थलसिमेत घडले आहे. वादी व प्रतिवादींनी भागिदारीचा व्यवसाय या मे. कोर्टाचे स्थलसिमेत चालू केला आणि वादी व प्रतिवादींनी सदर भागिदारी व्यवसायाचे भागिदारीपत्र या मे. कोर्टाचे स्थलसिमेत दिनांक ६.११.२००६ रोजी विटा येथे केले. अशा रितीने सदर दावेस कारण या मे. कोर्टाचे स्थलसिमेत घडले आहे.”

6. Thus, the contention of the learned Counsel for the Petitioners that the Defendants filed their Written Statement by presuming the date of partnership deed as ‘November 6, 2011’ does not appear to be correct. On the contrary, the Plaintiff has specifically described the date of execution of partnership deed as ‘November 6, 2006’ at two places in the plaint. The partnership deed appears to have been filed alongwith the suit and is marked as Exhibit-39. The learned Counsel for the Respondent-Plaintiff has produced copy of the partnership deed for my perusal. It

bears the date of 'November 6, 2006'. Therefore, there is no *iota* of doubt that there has been error in para-6 and prayer clause (b) in describing the date of partnership deed as 'November 6, 2011'. The amendment sought to be carried out was undoubtedly formal in nature.

7. What remains now is, the stage at which the amendment was sought. No doubt, the Plaintiff is late in filing the application for amendment. By the time the application for amendment was filed on March 30, 2021, the arguments in the suit were being heard. The Trial Court has imposed costs of Rs.300/- for permitting the Plaintiff to amend the application. Accordingly, the order passed by the Trial Court on November 19, 2021 allowing the application for amendment is upheld. The Writ Petition, being devoid of merits is **dismissed** with no orders as to costs.

NEETA
SHAILESH
SAWANT

(SANDEEP V. MARNE, J.)

Digitally signed by
NEETA SHAILESH
SAWANT

Date: 2023.07.31
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