

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 738 OF 2020

Shagufta Mazhar Ali Sayyed Ali & Anr. ...Petitioners

Versus

Sayyed Tonique Ali Akbar Ali ...Respondent

...

Mr. Sudhir V. Sadavarte, *for the Petitioner.*

...

CORAM: SANDEEP V. MARNE, J.

DATE : 4th May 2023.

P.C.:

1 By this petition, petitioner assails order dated 27th September 2018 passed by the 18th Jt. Civil Judge, Junior Division, Pune thereby allowing plaintiff's application for amendment of plaint. The only amendment that the plaintiff sought was change of Northern side boundary of the suit property. The application was filed after the issues in the suit were framed and the trial had commenced. The application was opposed by the petitioner-defendant raising the ground that plaintiff failed to show due diligence as amendment was sought after commencement of trial. It was also contended that plaintiff had already amended suit once by filing application at Exh.55. By the order

impugned in the present petition, the trial court has proceeded to allow the amendment by awarding costs of Rs.3,000/- in favour of petitioner/defendant.

2. I have perused the order passed by the trial court. The only amendment that the plaintiff desired was changing description of suit property to limited extent of Northern-side boundary. Mr. Sadarvarte, the learned counsel appearing for petitioner would strenuously contend that changing one of the boundaries of the suit property would change the entire nature of the suit. I am unable to agree. The suit has been filed by the plaintiff seeking recovery of vacant and peaceful possession of the suit shop from the defendant. It is therefore incomprehensible as to how the nature of the suit would change merely by reason of alteration of one of the boundaries of the suit property.

3. In **Life Insurance Corporation Vs. Sanjeev Builders Pvt Ltd.** 2022 SCCOnline 1128, the Apex Court has laid down the broad principles relating to permissibility of amendment of pleadings. In paragraph 70 of the judgment the Apex Court has held as under :

“70. Our final conclusions may be summed up thus:

(i) Order II Rule 2 CPC operates as a bar against a subsequent suit if the requisite conditions for application thereof are satisfied and the field of amendment of pleadings falls far beyond its purview. The plea of amendment being barred under Order II Rule 2 CPC is, thus, misconceived and hence negatived.

(ii) All amendments are to be allowed which are necessary for determining the real

question in controversy provided it does not cause injustice or prejudice to the other side. This is mandatory, as is apparent from the use of the word “shall”, in the latter part of Order VI Rule 17 of the CPC.

(iii) The prayer for amendment is to be allowed

(i) if the amendment is required for effective and proper adjudication of the controversy between the parties, and

(ii) to avoid multiplicity of proceedings, provided

(a) the amendment does not result in injustice to the other side,

(b) by the amendment, the parties seeking amendment does not seek to withdraw any clear admission made by the party which confers a right on the other side and

(c) the amendment does not raise a time barred claim, resulting in divesting of the other side of a valuable accrued right (in certain situations).

(iv) A prayer for amendment is generally required to be allowed unless

(i) by the amendment, a time barred claim is sought to be introduced, in which case the fact that the claim would be time barred becomes a relevant factor for consideration,

(ii) the amendment changes the nature of the suit,

(iii) the prayer for amendment is malafide, or

(iv) by the amendment, the other side loses a valid defence.

(v) In dealing with a prayer for amendment of pleadings, the court should avoid a hypertechnical approach, and is ordinarily required to be liberal especially where the opposite party can be compensated by costs.

(vi) Where the amendment would enable the court to pin-pointedly consider the dispute and would aid in rendering a more satisfactory decision, the prayer for amendment should be allowed.

(vii) Where the amendment merely sought to introduce an additional or a new approach without introducing a time barred cause of action, the amendment is liable to be allowed even after expiry of limitation.

(viii) Amendment may be justifiably allowed where it is intended to rectify the absence of material particulars in the plaint.

(ix) Delay in applying for amendment alone is not a ground to disallow the prayer. Where the aspect of delay is arguable, the prayer for amendment could be allowed and the issue of limitation framed separately for decision.

(x) Where the amendment changes the nature of the suit or the cause of action, so as to set up an entirely new case, foreign to the case set up in the plaint, the amendment must be disallowed. Where, however, the amendment sought is only with respect to the relief in the plaint, and is predicated on facts which are already pleaded in the plaint, ordinarily the amendment is required to be allowed.

(xi) Where the amendment is sought before commencement of trial, the court is required to be liberal in its approach. The court is required to bear in mind the fact that the opposite party would have a chance to meet the case set up in amendment. As such, where the amendment does not result in irreparable prejudice to the opposite party, or divest the opposite party of an advantage which it had secured as a result of an admission by the party seeking amendment, the amendment is required to be allowed. Equally, where the amendment is necessary for the court to

effectively adjudicate on the main issues in controversy between the parties, the amendment should be allowed.”

4. True it is that the application for amendment was filed after commencement of trial. The issues in the suit were framed on 21st March 2016 and the amendment application was filed on 17th January 2018. Before that, the plaintiff had once amended the plaint in the year 2014 to the extent of correction of date in paragraph No.7 of the plaint. The plaintiff could have and ought to have incorporated the amendment relating to change of Northern boundary of the suit property at that time itself. Since plaintiff was late in moving the amendment application, the trial court has adequately compensated the defendant by awarding costs. Since the amendment has not changed the nature of suit and since the defendant is compensated by the trial court by awarding costs, no case is made out for interference in the impugned order. The petition is devoid of merits and dismissed with no orders as to costs.

(SANDEEP V. MARNE, J.)