

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR**

Writ Petition No.1701 of 2018

MAHENDRA ABAJI THEMESKAR VS GHANSHYAM LEKHRAJ DAWARA AND OTHERS

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Ms Mallika Yaduka, Advocate h/f Shri S.P. Bhandarkar, Advocate for the Petitioner
Shri Kale, Advocate for the respondent No.1

**CORAM : ANIL S. KILOR, J.
DATED : 05.01.2023.**

1. Heard.
2. By this writ petition, the petitioner has questioned the legality and correctness of the order below Exh.49 dated 12.01.2018 passed by 2nd Joint Civil Judge Senior Division, Chandrapur in Special Suit No.18 of 2013, allowing the application for amendment.
3. The learned counsel for the petitioner submits that the amendment, which was allowed by the learned trial Court, will change the nature of the suit and it will affect the defence raised by the defendants and therefore, the learned trial Court has committed error in allowing the same.
4. She further points out that the amendment application was made after commencement of the trial, accordingly, she prays for quashing and setting aside the impugned order.
5. On the other hand, Shri Kale, learned counsel for the respondent No.1 supports the impugned order and submits that

no prejudice would be caused to the petitioner because of the said amendment and further it will not change the nature of dispute.

6. I have perused the documents filed along with the petition and the impugned order.

7. The respondent No.1/plaintiff preferred suit for damages against the petitioner and two other defendants and thereby, claimed Rs.25 Lakhs along with future interest @ 24 % per annum.

8. At the stage when the matter was fixed for evidence, the plaintiff filed an affidavit in chief and moved an application for amendment seeking thereby to add paragraph Nos.3A, which reads thus:

“3A) “it is submitted that on or about second week of November 2012 defendant no.3 visited to the hotel of plaintiff and at that time the son of plaintiff was present. The defendant no.3 asked Rs.10,000/- (Ten thousand) for advertisement of plaintiffs hotel in the news paper. When plaintiff son refused it, then asked atleast Rs.5000/- (five thousand) should be given. The plaintiff son again refused then in angry the defendant no.3 while returning given the threat that, now see what will be the consequences of refusal”.”

9. The learned trial Court, after hearing both the parties, allowed the said application, accepting the case of the plaintiff that inadvertently fact stated in the proposed amendment was not mentioned in the plaint, and as the amendment would not change the nature of dispute, and further as the cross-

examination was not conducted till date, the application was allowed.

10. Though, it is the submission of the petitioner that the said amendment would change the nature of the suit and it will affect the defence raised by the defendants, nothing has been pointed out how it will be prejudicial to the petitioner and how the said amendment would change the nature of the suit.

11. Admittedly, after filing the affidavit-in-chief, the cross-examination was not conducted and therefore, considering the nature of the amendment and pleadings made in the suit, I am of the opinion that no perversity or illegality has been committed by the learned trial Court in allowing the amendment.

12. The learned counsel for the petitioner has placed reliance on the judgments of the Hon'ble Supreme Court of India in the cases of *Life Insurance Corporation of India Vs. Sanjeev Builders Private Limited and Another*¹ and *B.K. Narayana Pillai Vs. Parameshwaran Pillai and another*².

13. There is no dispute about the law laid down by the Hon'ble Supreme Court of India, in the case of Life Insurance Corporation of India (supra) which reads thus:

“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

1 2022 SCC OnLine 1128

2 (2000) 1 Supreme Court Cases 712

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 pinpointedly 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. (See Vijay Gupta v. Gagninder Kr. Gandhi & Ors., 2022 SCC OnLine Del 1897)."

14. If the above referred principles are considered, nothing is pointed out which warrants rejection of amendment.

15. As far as the judgment in the case of *B.K. Narayana Pillai (supra)* is concerned, it is distinguishable on facts and as such it will not help the petitioner, in this case.

16. In the circumstances, the petition is **dismissed**.

[ANIL S. KILOR, J.]