



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

956 WRIT PETITION NO. 935 OF 2022

Gorakh Bhiku Kavitke

....Petitioner

VERSUS

Vijaykumar Santram Kaile

.....Respondent

.....

Mr. V. D. Gunale, Advocate for the Petitioner.

Mr. N. J. Patil, Advocate for the Respondent.

CORAM : R. M. JOSHI, J.

DATE : 14th NOVEMBER, 2024.

PER COURT :

1. This petition takes exception to the order passed below Exhibit 41 in Regular Civil Suit No. 148/2016 dated 1612.2021 whereby application for amendment filed under Order 6 Rule 17 of the Code of Civil Procedure by Defendant/Petitioner came to be rejected.

2. Learned counsel for the Petitioner submits that amendment to the written statement needs to be allowed liberally unless there is withdrawal of any admission on the part of the defendant. He makes a statement that this is not a case wherein any withdrawal of admission has been sought to be done by the defendant by introducing amendment. It is his contention that the

learned Trial Court has committed serious error in going into the merit of the case sought to be amended by the defendant. In this regard, attention of the Court is drawn to the observations made by learned Trial Court which read thus :-

It is contention of defendant that the exchange of land was oral one. The suit property being immovable and landed property, could not be exchanged or delivered orally.

It is also his further submission that the evidence has not commenced in the suit. Thus, it is his contention that by imposing appropriate condition, amendment can be allowed.

3. Learned counsel for Respondent/original Plaintiff opposed the petition by contending that the application has been filed belatedly after four years and as such the same has been rightly rejected by the learned Trial Court in view of proviso to Order 6 Rule 17 of the Code of Civil Procedure.

4. As rightly pointed out by learned counsel for Petitioner that the law on the point of amendment is fairly settled to say that amendment to the written statement can be allowed liberally unlike amendment to the plaint. In the present case admittedly evidence of

the parties has not commenced. As such, no prejudice much less any irreparable loss will cause to the Plaintiff if amendment is allowed. Apart from delay, the main reason for rejection of amendment seems to be the opinion formed by the learned Trial Court that there cannot be any exchange of immovable property orally. It is not open for the Court to go into the merit of the amendment at the stage on which it is to be allowed. The Trial Court, therefore, has committed error in rejecting the application. Hence, it is a fit case to cause interference in the impugned order. Since the application was filed after about four years, the Petitioner is hereby directed to pay cost of Rs. 5,000/- payable to Advocates' Bar Association, High Court of Bombay, Bench at Aurangabad. Petition is allowed in above terms. Application Exhibit 41 stands allowed. Amendment be carried out within a period of two weeks from today.

(R. M. JOSHI)
Judge

dyb