



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

911 WRIT PETITION NO. 4045 OF 2024

Manikchand Babulal Rathor Through Its Partner Jawaharlal Satyapal Rathor
VERSUS
Syed Arifuddin Syed Ziyauddin And Others

...
Sr. Advocate for the Petitioner : Mr. V.D. Hon i/b. Mr. A.V. Hon
Sr. Advocate for Respondent 1 : Mr. Rajendra S. Deshmukh i/b. Mr. Jay Veer,
Mr. A.D. Hande
...

CORAM : ARUN R. PEDNEKER, J.

Dated : April 19, 2024

PER COURT :-

1. Heard the Mr. V.D. Hon, learned Senior Counsel for petitioner/defendant and Mr. Rajendra S. Deshmukh, learned Senior Counsel for respondent No. 1/original plaintiff.

2. Notices are not issued to other respondents, since they are not contesting respondents/defendants and the original plaintiff is before this Court.

3. By way of present writ petition, the petitioner/original defendant is challenging the order dated 23.2.2024 passed by the learned District Judge-1, Biloli below Exh. 136 in R.C.A. No. 36/2013.

4. The facts, leading to the institution of the present writ petition is summarized as under :-

Plaintiff/respondent No. 1 herein filed suit for recovery of possession of suit plot from petitioner and also for damages of its unauthorized use and

for perpetual injunction. The suit was decreed and the appeal against the said decree is pending before the appellate Court. In appeal, an application for amendment in written statement was filed by the original defendant. The same was rejected by the appellate Court. Against the said rejection Writ Petition No. 6499/2016 was filed, which came to be allowed and this Court permitted the defendant to amend the written statement. Pursuant thereto the written statement was amended. On written statement being amended, the original plaintiff filed application under Order VIII, Rule 9 of Civil Procedure Code at Exh. 136 in R.C.A. No. 36/2013, seeking permission to file reply to the amended written statement. The said application was opposed by the original defendant. On hearing, the learned appellate Court allowed the application, Exh. 136 and plaintiff was allowed to amend in the plaint.

4. Mr. V.D. Hon, learned Senior Counsel for the petitioner submits that the application being filed under Order VIII Rule 9 of C.P.C. is not tenable and it only provides for amendment of pleadings in the written statement. The pleadings of the plaint cannot be amended under Order VIII Rule 9 of C.P.C. Hence, present writ petition is filed to challenge the impugned order passed by the appellate Court.

5. Mr. Hon, learned Senior Counsel has relied upon the judgment of this Court in **Writ Petition No. 524/2009 dated 23.9.2009 (Datta Laxmikant Nayak Karmali Vs. Priya Daata Nayak Karmali)** and contends that the Order VIII, Rule 9 of C.P.C. relates to amendment of pleadings in the written statement and relied upon para Nos. 22, 23 and 24 of the judgment, which

are quoted below :-

"22. Order VIII pertains to the written statement exclusively. Scheme contained therein is based on the dos and do not as to the written statement. Rule 9 thereof, *inter alia*, contains a prohibition against further pleadings by way of Written Statement or Additional Written Statement.

23. The "pleading" which may be allowed by way of "further pleadings" once the written statement is filed, if the defendant so prays for allowed whenever ordered by the Court at any stage, are expressly narrated in Rule 9. It will be convenience and useful to have a quick glance on Rule 9, which, for ready reference is quoted below :

"Rule 9 Order VIII – Subsequent pleadings.- No pleading subsequent to the written statement of a defendant other than by way of defence to set-off or counter-claim shall be presented except by the leave of the Court and upon such terms as the court thinks fit; but the Court may at any time require a written statement or additional written statement from any of the parties and fix a time of not more than thirty days for presenting the same."

24. A party referred to and denoted in the Rule 9 is and has to be defendant would be vivid from reading of Rule 9 in the following manner :

(1) Order VI of C.P.C. which relates to the "pleadings Generally", in Rule (1) the term "pleading" has been defined to mean plaint and written statement.

(2) Order VII is devoted to contents of plaint and the procedure to be followed by parties and the Court in that behalf.

(3) Order VIII is devoted for the written statement and restrains thereon.

(4) Any subsequent pleadings, after the filing of written statement of the "defendant" shall not be allowed.

(5) Any such subsequent pleading can be allowed by

way of defence to the set off or a counter claim, means a written statement to counterclaim or set off which for all purposes are a "Plaint".

(6) Pleading subsequent of written statement by way of "written statement or additional written statement" may be allowed only when leave is granted by the Court on such terms as Court thinks fit.

(7) The prohibition does not apply to power of Court to require a written statement or additional written statement from any of the parties.

(8) Term Parties referred to in Rule 9 when construed with reference to context, has to mean to be the "defendant" alone and cannot mean plaintiff, as the terms "written statement" or "additional written statement" cannot and can never mean to refer to the plaintiff.

(9) Such written statement or additional written statement when ordered by the Court has to be filed within not more than 30 days failing which Court can pronounce the judgment.

(10) What is permissible under Rule 9 will have to mean that a written statement or a defence to the set off or counter claim has to come as routine course.

(11) However, when it refers to a total prohibition of further pleadings, it essentially refers to the written statement alone.

(12) Moreover, the power of Court to call or require a written statement or additional written statement as well essentially refers to calling it from the defendants, lest it would not refer to pronounce the Judgment which wording is analogous to one used in Rule 10 of Order VIII."

6. In response thereto, Mr. Rajendraa S. Deshmukh, learned Senior Counsel appearing for the original plaintiff/respondent No. 1 herein fairly

submitted that the application cannot be considered as the said application was filed under Order VIII, Rule 9 of C.P.C. and the plaintiff would have liberty to apply for amendment in plaint under Order VI Rule 17 of C.P.C. and therefore, seeks liberty to move an appropriate application under Order VI, Rule 17 of C.P.C. to amend the plaint by the plaintiff.

7. In view of the same, the order passed by the appellate Court below Exh. 136 is quashed and set aside with liberty to the plaintiff to apply for amendment of plaint under Order VI, Rule 17 of C.P.C., if it is so available in law and meets the conditions of Order VI, Rule 17 of C.P.C. If such application is filed, the concerned court to decide the same in accordance with law and I have not expressed on merits of such application.

8. Vide order dated 8.4.2021 in Second Appeal No. 114/2021 this Court has directed to expedite the appeal. The said order would continue to operate.

9. With the above observations, the writ petition is disposed of.

Parties to act on authenticated copy of this order.

(ARUN R. PEDNEKER, J.)

ssc/