



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 5465 OF 2023

DR BABASAHEB AMBEDKAR MISSION ARDHAPUR THROUGH ITS
PRESIDENT PIRAJI MANIKRAO SARODE

VERSUS

MUNICIPAL COUNCIL ARDHAPUR THROUGH ITS CHIEF OFFICER

Mr. A. D. Hande, Advocate for the petitioner
Mr. D. Y. Nandedkar, Advocate for the respondent

CORAM : R. M. JOSHI, J.

DATE : 14th JUNE, 2024

PER COURT :-

1. Heard. By consent of both sides, heard finally at the stage of admission.
2. This petition takes exception to the order dated 5th April, 2023 passed by the Civil Judge Junior Division, Ardhapur in RCS No. 28 of 2022 whereby the application for amendment filed by the plaintiff / petitioner was rejected.
3. The plaintiff filed suit for perpetual injunction and damages claiming that he had right of fishing for the period from 01.04.2021 to 31.03.2022. It is his contention that during the course of hearing of Exhibit 5 the Government Resolution dated 3rd July, 2019 came to be noticed and according to the same, the fishing rights are to be given a

period of five years and not less than that period. The petitioner/plaintiff, therefore has sought amendment to the plaint by changing the period from 01.04.2021 to 31.03.2022 to 01.04.2022 to 31.03.2026. The said amendment was opposed by the defendant.

4. The learned Trial Court after considering the original pleadings of the parties has held that the plaintiff wants to change the period from 01.04.2021 to 31.03.2022 to period from 01.04.2022 to 31.03.2026. It is further observed that the petitioner has also sought the relief of recovery of amount of Rs.1,51,000/- along with interest at the rate of 18% per annum from 10.03.2021 till recovery of the amount, which is not inconsoance with the proposed amendment.

5. Having considered pleadings before Trial Court and having regard to the facts and circumstances of case and nature of suit, this Court finds no perversity in the findings recorded by the learned Trial Court that the proposed amendment will change the nature of the suit. It might be argued that the nature of suit remains the same as only the period for which the right is claim by the plaintiff is sought to be changed. Such submissions may on the face of it appear attractive, however, careful perusal of the pleadings of the plaintiff shows that the said period has not only consequence of the right of the parties but also on the amount of recovery of the damages etc. It is also pertinent to

note that the plaintiff's case rests on the contract between the parties for a particular period and now he wants to unilaterally change the said period without further contract but on the basis of the Government Resolution. In such circumstances, apparently altogether different case is sought to be made out by plaintiff and hence, the findings recorded by the Court that there would be change in the nature of suit cannot be faulted.

6. In view of above discussion, this Court finds no reason or justification to cause interference in the petition. Hence, petition stands dismissed.

(R. M. JOSHI, J.)

ssp