



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD
911 WRIT PETITION NO. 6146 OF 2007

Ramprakash Rajaram MantriPetitioner

VERSUS

Maharashtra State Finance Corporation
& anotherRespondents

Mr. Milind Patil, Advocate for the Petitioner.
Ms. S. M. Gunjkar, Advocate holding for Mr. S. R. Deshpande,
Advocate for Respondent No. 1.
Mrs. A. N. Ansari, Advocate for Respondent No. 2.

CORAM : R. M. JOSHI, J.
DATE : 14th NOVEMBER, 2024.

PER COURT :

1. Heard.
2. This petition takes exception to the order passed below Exhibit 85 in Special Civil Suit No. 249/2001 dated 13.07.2007 allowing the application filed by Defendant No. 2 to amend the written statement.
3. It is the case of Petitioner that at belated stage without any explanation for preferring application for amendment before commencement of the trial, application Exhibit 85 came to be filed by Defendant No. 2 seeking amendment to the written statement.

Learned counsel for Petitioner submits that in view of provisions of Order 6 Rule 17 of Code of Civil Procedure, it is not open for the Court to allow any application for amendment after commencement of trial unless the Court comes to the conclusion that inspite of due diligence the parties could not raise the amendment before it. It is submitted that amendment which is sought was well within the knowledge of Defendant No. 2 and since the same was not raised prior to commencement of trial, the learned Trial Court has committed serious error in law by allowing the application.

4. Learned counsel for Defendant No. 2/Respondent tried her best to convince the Court that amendment which is allowed by the Trial Court is just and necessary for proper and effective decision of the case.

5. Order 6 Rule 17 of Code of Civil Procedure prohibits the Court from allowing application after commencement of trial unless conclusion is drawn that inspite of due diligence the parties could not have raise the issue before the Court. Insofar as present case is concerned, the amendment sought by Defendant No. 2 in respect of development of property by him by investing huge amount. Even if it

is expected that any such development is carried out, the said fact was well within the knowledge of Defendant No. 2 and this could not have been pleaded in the written statement. This is not a case wherein any subsequent event is sought to be brought on record.

6. Learned Trial Court, while considering the application filed by Defendant No. 2 has ignored the proviso to Order 6 Rule 17. Unless there was a conclusion/finding about due diligence on the part of Defendant, no amendment could have been allowed after commencement of trial. Now, it is informed to this Court that the amendment application came to be filed after evidence of both the sides was over and the matter was kept for final hearing.

7. In the above facts of the case and having regard to the provisions of Order 6 Rule 17 of Code of Civil Procedure, order impugned cannot be sustained. Hence, it is set aside. Petition stands allowed in terms of prayer clause 'B'.

(R. M. JOSHI)
Judge