



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 13505 OF 2023

Birmal Vasudev Bobade

VERSUS

Laxman Anudumbar Baraskar

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Mr. S. S. Kulkarni, Advocate for the Petitioner

Mr. N. S. Tekale, Advocate for Respondents

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CORAM : R.M. JOSHI, J

DATE : JUNE 20, 2024

PER COURT :

1. By consent of the parties, heard finally at admission stage.

2. This Petition takes exception to the order dated 21.10.2023 passed in RCS No. 52/2011 whereby application Exh. 171 filed by Plaintiff/Respondent for amendment to the plaint stood allowed.

3. Respondent/Plaintiff filed suit for recovery of money on the basis of cheque/negotiable instrument issued by the Defendant. Written statement was filed by the Defendant raising objection about the non-joinder of the joint account holder as party to the suit.

4. In spite of the said objection, Plaintiff choose not to join present Petitioner as party

Defendant to the suit and led evidence. It is only after the cross-examination of the Defendant was over, application Exh. 171 was moved for seeking amendment to join Petitioner as party Defendant.

5. Learned Counsel for the Petitioner submits that in view of proviso to Order VI, Rule 17 CPC, unless the Court records findings that the Plaintiff had shown due diligence, it was not open for the Court to allow the amendment to the plaint.

6. Learned Counsel for the Respondent/Plaintiff opposed the said contention by drawing attention of the Court to the fact that no prejudice will cause to the Defendants if the Petitioner is joined as party. He further makes statement that even after joining additional Defendant, no further evidence would be required to be laid and as such, there is no prejudice likely to cause to other side.

7. Proviso to Order VI, Rule 17 CPC mandates the Court to record finding about due diligence of the party before allowing amendment sought, in case amendment is sought after commencement of trial. In the

instant case, admittedly by filing written statement Defendant had raised issue about non-joinder of Petitioner to be party to the suit. In spite of the same, Respondent/Plaintiff without amending the plaint lead evidence. Now for the purpose of creating ground for filing this application allegations are sought to be made against Advocate. It would not be open for any party to make bald allegations against lawyer and without substantiating the same and without taking such allegation to its logical end, no party can be allowed to take such plea casually. Since it was within the knowledge of the Plaintiff that the cheque in question was issued from the joint account, it was absolutely necessary for the Plaintiff to join Petitioner at the time of filing of the Petition or at least when specific objection was raised in the written statement about non-joinder. Since the same has not been done at appropriate stage, it cannot be held that due diligence is shown by the Plaintiff. Since no such findings are recorded by the Court, there cannot be any justification to permit the Plaintiff to amend the plaint at the stage when the evidence in the trial Court is on the verge of completion.

8. In view of the above, Petition is allowed in terms of prayer clause 'B'.

(R. M. JOSHI, J.)

Malani