



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

906 WRIT PETITION NO. 14861 OF 2023

Tabassum Harunkha PathanPetitioner

VERSUS

Bhagitri Muktaji Kolekar & othersRespondents

Mr. P. S. Chavan, Advocate for the Petitioner.

Mr. Abjijeet More, Advocate for Respondent Nos. 5(A), 5(C) to 5(E),
6(A) to 6(C), 6(E) and 7.

WITH
WRIT PETITION NO. 14867 OF 2023

Dhiraj Tanaji SalgarPetitioner

VERSUS

Bhagitri Muktaji Kolekare & othersRespondents

Mr. P. S. Chavan, Advocate for the Petitioner.

Mr. Abjijeet More, Advocate for Respondent Nos. 5(A), 5(C) 5(D), 5(E),
6(A) to 6(C), 6(E) and 7.

CORAM : R. M. JOSHI, J.

DATE :20th JULY, 2024.

PER COURT :

1. Original Defendant Nos. 8 and 9 in Regular Civil Suit No. 55/2009 being aggrieved by order passed below Exhibits 182 and 184 rejecting application for amendment to the written statement filed to the counter claim of the original Defendants, have preferred these Petitions.

2. There is no dispute about the fact that the Plaintiffs filed Regular Civil Suit No. 55/2009 wherein written statement and counter claim was filed by the Defendants therein. These Defendants added present Petitioners with Defendant Nos. 8 and 9 in the counter claim. These Defendants filed their written statement. After recasting of issues, evidence was led by the Defendants. After closure of evidence, the matter was posted for argument. Petitioners filed application for amendment to the written statement and to file counter claim seeking declaration that these Defendants are the owners of the suit property.

3. Learned counsel for the Petitioners submits that in order to decide the relevant issues involved in the present suit so also to avoid multiplicity of litigation, amendment ought to have been allowed by the Trial Court. In order to support his submission that there is no embargo to filing of counter claim after written statement is filed by Defendant, reliance is placed on judgment of this Court in case of Maruti Vithoba Kulal and another vs. Nivrutti Deoram Kulal and others, **2019(2) ALL MR 723**. Reliance is also placed on judgment of this Court in case of Basavanappa Bhimsha Koli @ Jamdar vs. Sunil Basvanappa Jidge, **2007(6) Mh.L.J. 740** to

contend that the amendment ought to have been allowed to avoid multiplicity of proceeding. He also placed reliance on judgment of this case in case of Sumer Builders Pvt. Ltd. vs. Sadhana Textiles Mills Pvt.Ltd and others, **2015(1) ALL MR 795**.

4. Learned counsel for Respondents supported the impugned order.

5. There cannot be any dispute with regard to the preposition sought to be canvassed by learned counsel for Petitioners that amendment would be allowed to avoid multiplicity of proceedings. Similarly, there is no dispute about the fact that it is open for the Defendants to file counter claim in respect of cause of action which has arisen before filing of the written statement. Similarly, in case of Sumer Builders (supra) this Court has held that the jurisdiction of the Court under Order 6 Rule 17 of Code of Civil Procedure is wide enough to permit amendments even in cases where there has been substantial delay in filing amendment application. It is held that the dominant purpose of allowing amendment is to minimise litigation.

6. It is pertinent to note that proviso to Order 6 Rule 17 of Code of Civil Procedure mandates that unless due diligence is shown, it is not open for the Court to accept the prayer of amendment. In the instant case, admittedly, Petitioners were fully aware of the rights accrued in their favour pursuant to the sale-deed executed during the pendency of the suit. This fact was within the knowledge of these Petitioners at the time of filing of written statement. In spite of the same, they preferred not to raise any such claim and proceeded with the trial and also led evidence. In view of the proviso to Order 6 Rule 17, it is mandatory for the parties to show diligence and in absence thereof, the Court does not get jurisdiction to pass any order. Contention of learned counsel for the Petitioners that other side can be compensated in terms of money cannot be accepted as a rule in every case. It depends upon facts of each case as to whether imposition of cost for allowing amendment would meet ends of justice.

7. When it is said that for avoiding multiplicity of proceeding, amendment is required to be allowed, at the same time, right of Plaintiffs/party to the suit to get expeditious disposal of the same cannot be ignored. If the party is not vigilant in filing

application for amendment, it should suffer therefor but other side cannot be made to suffer. In a given case, allowing amendment may lead to turning clock back, i.e. trial may be required afresh, which would delay the decision of lis. In the instant case, in any event, rejection of application for amendment would not preclude the Defendants to raise the claim in respect of the suit property, if within limitation. Having regard to these facts, no prejudice much less irreparable loss will be caused to the Petitioners if those applications were not allowed.

8. Having regard to the aforestated facts, for want of perversity, this Court does not wish to cause interference in the impugned order in exercise of writ jurisdiction. Hence, both the Petitions stand dismissed.

(R. M. JOSHI)
Judge

dyb