

HARSHADA H. SAWANT
(P.A.)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.10903 OF 2024

Muhammad Arif Shafeeq Ahmed Patel

.. Petitioner

Versus

Vilas Madanlal Kothari and Ors.

.. Respondents

-
- Ms. Divya Srivastava, Advocate for Petitioner.
 - Mr. Rohit Joshi, Advocate for Respondent No.4.
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CORAM : MILIND N. JADHAV, J.

DATE : AUGUST 09, 2024

P.C.:

1. Heard Ms. Srivastava, learned Advocate for Petitioner and Mr. Joshi, learned Advocate for Respondent No.4.

2. By virtue of the impugned order dated 02.04.2024 passed below Exhibit-164 in Special Civil Suit No.295 of 2011, Application filed by Writ Petitioner who is nomenclatured as Defendant No.1 before the Trial Court stands rejected. The original written statement is filed by Defendant No.1 on 01.10.2013 whereas Application seeking amendment thereto is filed on 01.09.2023.

3. It is the case of Defendant No.1 that Defendant No.1 needs to explain the nexus between the Defendant No.1 and rest of the Defendants to the suit proceedings in so far as *inter se* transaction between the Defendants is concerned *qua* the suit property. One of the Defendant is represented by Mr. Joshi he opposes the Petition.

4. Ms. Srivastava, learned Advocate appearing for Writ Petitioner – Defendant No.1 would submit that there is a subsequent suit filed by Defendant No.1 against rest of the Defendants in the present suit *qua* the same suit property. She would submit that a Memorandum of Understanding is executed *inter se* between the Defendants. According to her the issues that would be framed in Defendant No.1s suit would overlap the issues which would be framed in the present suit proceedings. The present suit is filed in the year 2012 and witness action, of the Plaintiff is complete. Before the Defendants could embark upon their witness action the present Application is filed seeking amendment to the written statement to explain the transactions between the Defendants.

5. I have perused the Application as filed and what I find after reading the same is that Defendant No.1 seeks to interpret and explain the factual circumstances as per the Memorandum of Understanding as stated in the written statement. At the outset, it is seen that explanation desired to be put in by the Defendant No.1 is not relating to any subsequent events pursuant to filing of the written statement but relates to interpretation of Defendant No.1's right and entitlement with respect to the suit property *qua* the rights of the rest of Defendants in view of the Memorandum of Understanding which is the subject matter of the subsequent suit proceedings filed by Defendant No.1.

6. It is argued by Ms. Srivastava that Plaintiff is not a *bonafide* purchaser for value of the suit property, however this submission is a triable issue which will be decided by the Trial Court. No such interpretation or explanation is required to be incorporated with respect to such submission. It is next submitted that the stand adopted by rest of the Defendants in the subsequent suit filed by Defendant No.1 is disputed by Defendant No.1 in the present suit proceedings. Once again as and when the Defendants' turn comes to lead evidence in rebuttal, it shall be open to the Defendant No.1 to file an appropriate Affidavit of evidence depending upon pleadings and take any such stand, if it is so available to Defendant No.1.

7. It is next submitted that due to change in circumstances and to decide the real controversy between the parties in question the explanatory amendment sought for by Defendant No.1 should be allowed as it is purely explanatory in nature. It is also argued that amendment sought for in the written statement should be construed in a more liberal manner as per certain extant decisions of the Court. The Court is also urged to consider levying costs on Defendant No.1 in order to balance the convenience and equity and allow the amendment which has been sought for and finally it is argued that allowing the amendment would cause no prejudice whatsoever to the Plaintiff in the suit proceedings.

8. Ms. Srivastava desires to refer to rely upon certain decisions of the Court in support of her submissions. Considering the nature of the Application filed by Defendant No.1, I do not find it necessary to look into those decisions which are desired to be placed before me as it is not relevant. It is seen that suit is of the year 2012 and amendment application to the written statement is filed after a hiatus of ten years and that too after completion of witness action of the Plaintiff in the suit proceedings. On this ground itself the amendment application which seeks to justify and explain the stand of Defendant No.1 as taken in its written statement deserves to be disallowed and rejected.

9. That apart, submissions made by Ms. Srivastava would have to be then considered in an utopian state and not in the facts and circumstances of the present case. The Defendants cannot be allowed to offer an explanation and thereby improve the pleadings contained in the written statement filed on 01.10.2013. All that Defendant No.1 is required to do now is to lead evidence in rebuttal. The Application filed seeking the proposed amendment below Exhibit-164 is clearly unsustainable in law and therefore no fault can whatsoever be found with to interfere with the order dated 02.04.2024 passed by learned Trial Court. It is a well reasoned and cogent order. The order dated 02.04.2024 stands sustained and upheld. Resultantly, the Writ Petition fails.

10. Needless to state that Defendant No.1 shall be entitled to argue all legal issues that may be available to Defendant No.1 strictly in accordance with law in the suit proceedings. It is also clarified that none of the observations and findings hereinabove will come in the way of Defendant No.1 in leading evidence in rebuttal in the suit proceedings and the suit proceedings shall be decided strictly in accordance with law and on basis of evidence led by the parties. All contentions of the parties, including that of Plaintiff are expressly kept open.

11. With the above directions, Writ Petition is disposed.

H. H. SAWANT

[MILIND N. JADHAV, J.]

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