

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

Writ Petition No.18891 of 2024

Ramesh Lokumal Dhanani ... Petitioner

V/s.

Smt. Matubai Sukha Jogi alias Machi
since deceased through legal heirs

Smt. Jayshree Ramesh Mitna & ors. ... Respondents.

Mr. Nikhil Waje a/w. Mr. V.V. Tapkir	Advocate for the Petitioner.
Mr. Yatin R. Shah a/w. Mr. Harsh Y. Shah	Advocate for Respondent Nos.3 to 5.

CORAM : S.M. MODAK, J

DATE : 18 December 2024.

P.C. :

Heard learned counsel for the parties. **Rule.** Rule made returnable forthwith.

2. The only issue arisen in this petition is “*whether the plaintiff was justified in seeking amendment in the plaint at the fag end of the trial and whether the trial Court was justified in rejecting the amendment as per the order dated 29 November 2024*” (Page-50). The copy of the plaint is on Page No.51. The learned Advocate for the petitioner has invited my attention to the relevant averments in the plaint. No doubt, in Para No.6 of the plaint, the plaintiff has averred about his stand in respect of notice dated 2 December 1991.

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This was a notice of termination of the agreement dated 12 February 1991. It was issued by defendant No.1. Plaintiff has pleaded about several false and frivolous allegations made in that notice. It is also true in Para No.14 the plaintiff has averred that cause of action first arose on 6 December 1991. While drafting the prayer clause there are declaration sought about binding nature of some documents executed by defendant no.1. Relief of specific performance of the agreement dated 12 February 1991 was also sought. There are other ancillary reliefs. Admittedly there was no relief about termination notice (which the plaintiff want to ask by way of amendment).

3. The suit was filed in the year 1992 whereas the application for amendment was moved on 13 November 2024 (Page-68). By way of amendment, the plaintiff sought a declaration that the termination notice is bad-in-law. **Para No.4 avers that plaintiff was not aware about the importance of seeking a declaration about the termination notice.** The defendants have objected for the amendment and trial Court rejected it.

4. Trial Court vide order dated 29//11/2024 rejected the amendment application moved by the plaintiff. It was rejected on account of conduct of the plaintiff and for the reason the prayer sought to be included by way of amendment is time barred. That is why present petition is filed by the plaintiff/petitioner. It is true the merits of the amended portion cannot be considered while dealing amendment application.

5. There is one more background for dealing with the order refusing amendment. The trial Court has framed the issue on 13 August 1998 (Page No.1 of the compilation filed on behalf of the petitioner). Re-casted issues are there on 21 August 2001 (Page No.5 of the compilation). **Issue Nos. 4 and 6 reads thus:**

“4. Does the Defendant No.1 prove that the contract between parties was validly terminated by the defendant No.1 by notice dated 2.12.91?

6. Do Defendant No.3 & 4 prove that the subsequent agreement dated 28.4.1983 in between Defendant No.1 & 2 and construction carried by the Defendant No.2 is valid as alleged?”

The burden is put on defendant No.1 that the termination vide Notice dated 2 December 1991 is valid whereas Issue No.6 caste burden on defendant Nos.3 and 4 to prove subsequent agreement dated 28 April 1983 is valid. Framing of these issues certainly gives a notice to the contesting parties including plaintiff about the burden undertaken by defendant No.1, 3 and 4. This burden relates to the termination of notice of which the plaintiff has now sought amendment after long period. Certain defendants have prayed for deletion of Issue Nos.4 and 6. The application is on Page-6 of the compilation. This was filed on 21 October 2024 and allowed on 4/12/2024. That is to say it was filed earlier to filing of amendment application by the plaintiff on 13 November 2024. Trial court

refused amendment also for the reason the amendment application was filed after filing of an application for deletion of issues.

6. The trial Court first rejected the prayer for amendment and by subsequent order dated 4 December 2024 has allowed the application for re-casting all issues. Issue Nos.4 and 6 were deleted. The learned Advocate for the petitioner has also invited my attention to the observations made in the said order. The learned Advocate for the petitioner tried his level best to convince me for the reason the nature of amendment is very formal that is to say only to add prayer about declaration about that termination notice.

7. He also relied upon various judgments and according to him, this amendment ought to have been allowed on the basis of law interpreted by Hon'ble Supreme Court in case of *I.S. Sikandar vs. K. Subramani & ors.*¹. If the relief sought by way of amendment is time barred, it should not be allowed. However if the amendment is of formal nature, it can be allowed by way of special circumstance. *He has read the observations in case of State Bank of Hyderabad vs. Town Municipal Council*². It is on the point of applicability of amended provisions of Order VI Rule 17 to the pending pleadings. Even though it may be true, it does not take away the power of the trial court to refuse amendment if the facts and circumstances warrant. He also relied upon the observations in case of *A.K. Gupta and Sons*

1 (2013) 15 SCC 27

2 (2007) 1 SCC 765

*Ltd. v/s. Damodar Valley Corporation*³. He also read the observations in the case of *Narinder Pal Singh vs. Jatinder Singh*⁴.

8. It is true that on certain occasions when the drafting is clumsy, under special circumstances amendment of such nature is allowed. Even if this Court would accept the submission on behalf of the petitioner that amendment is justified on the basis of the law interpreted in case of *I.S. Sikandar* (supra), still this Court cannot overlook the fact that this amendment application was filed on 13 November 2024 whereas the suit is of the year 1992. In the application, the petitioner has not explained why he waited for all these years. In fact when the issues include one of the issue pertaining to validity of termination notice, it must have prompted the petitioner-plaintiff to seek for amendment by way of including declaration as to the said notice. However, he has not exercised that option and he waited till the time the stage of recording of evidence is over.

9. Trial court in para no. 10 to 19 have given reasons for refusing amendment. Trial court has also discussed in para no. 23 the effect of filing of an application for deletion of issues on the amendment prayer sought. The observations in the judgments cited by the petitioner will not be useful due to conduct of the plaintiff throughout the trial. Learned advocate Shri Waje tried his level best to convince me in interfering in the order. However I was not

3 1965 SCC OnLine SC 49

4 2017 SCC Online P & H 3240

impressed by his arguments. He could not offer any explanation for not filing such amendment application for long years except the explanation pleaded in para no.4. The said explanation is not sufficient to show indulgence by this Court even by issuing notice. The reason is the explanation is not sufficient to brush aside the reasoning given by the trial court on the basis of conduct of the petitioner. Considering the circumstances, trial court was justified in dealing with the issue of limitation. Trial court also dealt with the observations in the judgments cited before him. I agree to his view.

10. Hence, no indulgence can be shown including issuance of notice. The Writ Petition stands dismissed. The Rule is discharged accordingly.

(S.M. MODAK, J.)