



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

WRIT PETITION NO. 2722 OF 2019

(Kamal Ramnarayan Daga Vs. Mahendrabhai Bhagwanjibhai Adtiya and another)

*Office Notes, Office Memorandum of Coram,
appearances, Court's orders of direction,
and the Registrar's orders.*

Court's or Judge's order

Mr. J.B. Kasat, Advocate for Petitioner.

Mr. Ritesh Kalra, Advocate for respondent Nos. 1 and 2.

CORAM : ABHAY J. MANTRI, J.

DATE : SEPTEMBER 12, 2024.

Heard learned Counsel appearing for the parties.

2. By this petition, the petitioner, the original defendant, is challenging the order dated 16.02.2019 passed below Exh. 46 by learned 6th Jt. Civil Judge S. D. Amravati whereby permitted the plaintiffs to amend the plaint.

3. During the course of the argument, it reveals that the trial is yet to commence. Prior to that, the plaintiffs had moved an application to permit them to amend the plaint as mentioned in paragraphs Nos. (5A) and (5B) of the application.

4. After considering the rival contentions, the trial Court allowed the application, holding that the proposed amendment would not change the nature of the suit nor would it prejudice the rights of the defendant; therefore, it was allowed.

5. Mr. Kasat, learned Counsel for the petitioner, mainly harped that by way of the proposed amendment, the plaintiffs want to withdraw their admission in the plaint, which is not permissible. He further contended that the proposed amendment would change the nature of the suit and that as the amendment is not justified, it is liable to be set aside.

6. *Per contra*, Mr. Kalra, the learned Counsel for respondents Nos. 1 and 2, submits that by way of the proposed amendment, the plaintiffs want to correct the typographical mistake that occurred at the time of filing of the suit. The amendment would not change the nature of the suit, so also the trial is yet to commence; therefore, as per Order VI Rule 17 of the Civil Procedure Code, the plaintiffs are entitled to carry out the amendment, which would assist in determining the real controversy between the parties.

7. Perused the record and appreciated the rival contentions of the parties. It appears that the amendment application does not show that by the proposed amendment, the plaintiffs want to withdraw the admissions given in the plaint. On the contrary, it seems that by the proposed amendment, plaintiffs intend to correct some averments in the plaint, which occurred due to a typographic mistake. It does not appear that the proposed amendment would change the nature of the suit.

Therefore, in my view, the proposed amendment is necessary to determine the real question in controversy between the parties and to avoid a multiplicity of proceedings. In such an eventuality, permitting the plaintiffs to carry out the amendment would be proper.

8. The learned trial Court, while considering said facts, has rightly held that the plaintiffs are entitled to amend the plaint as it would not change the nature of the suit nor cause prejudice to the defendant's rights. Hence, I do not find substance in the contentions of the learned counsel for the petitioner that by the said amendment, plaintiffs are trying to withdraw their admissions.

9. In the aforesaid background and considering the facts of the case, in my view, the plaintiffs are entitled to carry out the proposed amendment since it would not change the nature of the suit nor would cause prejudice to the defendant; rather, it would help to determine the controversy between the parties. Hence, the petition sans merit. As a result, I pass the following order:

Order

- i) The petition is dismissed. No costs.
- ii) As a sequel of it, interim relief is vacated.

iii) Needless to clarify, after the plaintiffs carry out the amendment, the defendant is at liberty to file an amended written statement, if any, within 30 days thereafter.

(ABHAY J. MANTRI, J.)