



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

WRIT PETITION NO. 5845 OF 2019

(Sau. Minakshi Vishnu Thutte vs. Dilip Sudam Thutte and others)

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

Court's or Judge's order

Mr. P.B. Patil, Advocate for the petitioner.
Mr. A.A.Dhawas, Advocate for the respondents.

CORAM : ABHAY J. MANTRI J.

DATE : NOVEMBER 13, 2024

- 1) Heard learned Counsel appearing for the parties and perused the impugned order and record.
- 2) The petitioner is aggrieved by the order dated 14/06/2019 passed by learned Civil Judge Junior Division, Chikhli, below Exh.32 in Regular Civil Suit No.89/2017, whereby rejected the application for amendment filed under Order VI Rule 17 of the Code of Civil Procedure, 1908.
- 3) Learned Counsel for the petitioner vehemently submitted that the learned Judge erred in observing that the proposed amendment is not necessary to determine the controversy between the parties and it would change the nature of the suit. In fact, the proposed amendment is necessary to determine the real controversy between the parties, and it will not change the nature of the suit. Moreover, the issues have not been framed yet; therefore, if the proposed amendment is allowed, it will not cause any prejudice to the other side. Hence, he has prayed to set aside the impugned order by allowing the present petition.

4) Per contra, learned Counsel for the respondents fairly submitted that issues have not been framed till this date. However, he resisted the application, contending that the findings recorded by the learned trial Court are just and proper. Therefore, he has urged for the rejection of the petition.

5) At the outset, it appears that the petitioner has filed a suit for injunction, which is pending for framing of the issues. In the suit, the petitioner wants to bring certain facts on record, and therefore, she has moved an application permitting her to add para No.3-A in the plaint. Perused the proposed amendment. Certainly, it would not change the nature of the suit, but the said amendment is necessary to determine the real question in controversy between the parties. Furthermore, if the amendment is allowed, it will not cause any prejudice to the other side, but it would help to determine the real question in controversy between the parties.

6) Perused the impugned order. The learned Judge has erred in observing that the proposed amendment is not necessary to decide the controversy between the parties, and it would change the nature of the suit. The said findings appear incorrect and contrary to the facts on record, as the proposed amendment would not change the nature of the suit, but it is a clarificatory nature. Therefore, in my view, the order passed by the learned Judge is not sustainable in the eyes of law. Moreover, it is a settled position of law that all amendments that may be necessary for determining the real controversy between the parties are allowed if they would not cause any prejudice to the other side.

7) Thus, considering the above settled legal position of law and the fact that issues are yet to be framed, in my view, it would be appropriate to allow the petitioner/plaintiff to amend the plaint, as it would not change the nature of the suit, but it would help to determine the real question in the controversy between the parties. Also, amendments need to be allowed to avoid the multiplicity of proceedings. Hence, I deem it appropriate to pass the order as follows:-

ORDER

1. The petition is allowed.
2. The impugned order passed by the learned Judge is hereby quashed and set aside.
3. The petitioner is permitted to carry out amendment within two weeks from the date of production of copy of this order before the trial Court.
4. Inform the learned trial Court accordingly.

(ABHAY J. MANTRI, J.)