



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

WRIT PETITION NO. 6730/2019

Manish Manoharrao Bang and anr. vs. Mohan Hari Vasnik and anr.

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. S. S. Deshpande, Advocate for petitioners.

Mr. S. Mate, Advocate instructed by Mr. N. S. Deshpande, Advocate
for respondent no.2

CORAM : **ANIL L. PANSARE, J.**

DATE : **03.07.2024**

Heard.

Challenge is to the order dated 16.08.2019 passed by 15th Jt. Civil Judge Senior Division, Nagpur in Regular Civil Suit No.1291/2007. By the impugned order, the learned Judge has rejected the application filed by the petitioners – plaintiffs seeking amendment in the plaint. The plaintiff filed suit for permanent injunction and declaration. The respondents are allegedly power of attorney holders of the plaintiffs. Accordingly the plaintiffs filed suit seeking injunction against the respondents to not alienate the suit properties.

By way of amendment, the petitioners sought to add the words, “and damages”, at the end of the title clause and to make title clause read as, “Suit for permanent injunction and declaration and damages”. The petitioners further sought to add necessary pleadings to seek damages and ultimately to add prayer as regards damages.

The Trial Court noted that the application has been filed belatedly i.e. after commencement of trial on the sole

ground of inadvertence of the plaintiffs. The only reason assigned by the petitioners was that the counsel appearing for them failed to incorporate necessary pleadings. The Trial Court noted that the proposed amendment is not only barred by limitation but also of failing to show due diligence.

The counsel for the petitioners submits that to decide the real issue, the Trial Court ought to have allowed the application. He has placed reliance upon the judgment in *Dattaram Dharma Mayekar and anr. Vs. Abhimanyu Dharma Mayekar and Ors, 2012 (1) Mh.L.J. 971.* The amendment sought in the said case was as regards correction in survey number. The plaintiff therein got to know the correct survey number subsequent to commencement of the trial. Thus, there were two reasons for allowing the application. First is that the amendment was necessary to decide the real controversy and second is that the plaintiff acted diligently. Both the elements are absent in the present case.

The real controversy, in the present case is as regards alienating the suit property for which necessary pleadings and prayers have been made. The damages is something which is consequential to the acts purportedly done by the respondents. In any case, there is nothing on record to show that the plaintiffs-petitioners acted diligently. The reason that the counsel failed to incorporate the necessary pleadings is not sufficient to show due diligence.

Another judgment is in the case of *N. C. Banerjee and Company .Vs. Manoj Balkrishna Shah and Ors. 2011(6) Mh. L. J. 55.* The petitioners who were defendants had filed

counter claim seeking substantial reliefs as regards possession of the property. By way of amendment to the counter claim, the petitioners therein sought to add specific performance of agreement. Further, the application was filed in the light of liberty given by the Apex Court to file a suit in this regard. The Apex Court had appointed the petitioner as Special Officer to protect the interest of the depositors and the investors. It appears that the petitioner, instead of filing separate suit has thought it proper to lodge counter claim. The Court found that since the issue involved pertains to the interest of the depositors and investors and in that sense amendment pertains to real controversy and further that the application was filed under the liberty granted by Apex Court, the same ought to have been allowed. Such is not the case here.

As stated above, the amendment sought is not something that would be necessary to decide the real issue involved in the case and further there is complete absence of diligence.

In addition, counsel for the respondents has correctly argued that there is distinction between 'due diligence' and 'ignorance'. If the party or advocate appearing for the party, in spite of knowledge, has ignored to incorporate the pleading, which is sought to be added by way of amendment, that too subsequent to commencement of trial, such ignorance cannot be a matter of due diligence. The degree of prejudice that would be caused to the other side by permitting amendment after commencement of trial, is greater than the one at pre-trial stage. The due diligence will have to be considered in context

with the stage of the trial. This is how the law has been explained by the Single Judge of this Court in **Jayashree Subhash Kalbande and anr. Vs. Bhaurao Nagorao Derkar and Ors., 2014(4) Mh.L.J. 168.**

In view of above, no interference is required in the impugned order. The writ petition is, therefore, dismissed.

Writ Petition No. 6676/2019

The question involved in this petition is identical to what has been decided in Writ Petition No.6730/2019.

For the reasons stated in the above petition while declining to interfere in the writ jurisdiction, the present writ petition is also dismissed.

Writ Petition No. 6678/2019

The question involved in this petition is identical to what has been decided in Writ Petition No.6730/2019.

For the reasons stated in the above petition while declining to interfere in the writ jurisdiction, the present writ petition is also dismissed.

(Anil L. Pansare, J.)