



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

WRIT PETITION NO. 6854 OF 2019

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 iram s/o Namdeorao Pimpalde and another ..vs.. Ku. Ashvini d/o Ramesh Tapre and others)

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

Court's or Judge's orders

 Mr. K.B. Zinjarde, Counsel for the petitioners.

CORAM : ABHAY J. MANTRI, J.

DATE : 19-10-2024

Heard Mr. K.B. Zinjarde, learned Counsel for the petitioners.

Despite service of notices, none appears on behalf of the respondents.

2. Perused the impugned order and record.

3. By this petition, the petitioners have challenged the order dated 04-09-2019 passed below Exhibit 177, whereby rejected their application to permit them to adduce additional evidence pursuant to the amendment carried out in the suit.

4. The petitioners have filed the suit claiming damages for malicious prosecution filed by respondent No.1 for defaming and lowering their image in society. It further appears that on 28-02-2012, the petitioners, i.e. original plaintiffs, closed their evidence. Subsequently, on 28-07-2014, they moved an application for amendment of the plaint, which came to be allowed on 31-07-2014. Against the said order, the respondents had preferred a writ petition before this Court, which came to be dismissed on 09-09-2015.

5. Thereafter, on 28-08-2019, the petitioners filed the application permitting them to adduce the additional evidence pursuant to the amendment they carried out. The respondents opposed said application. The Trial Court, after considering the record, rejected the said application, holding that the petitioners want to lead the evidence on the fact which occurred during the pendency of the suit, have no concern with the defamation of the petitioners and, therefore, are not necessary for adjudication of the suit.

6. The learned Counsel for the petitioners vehemently contended that the petitioners intend to adduce additional evidence in view of the amendment. However, the trial Court, without considering the said fact, erred in holding that the said facts are not required, which the petitioners want to adduce by way of evidence, to determine the fact in issue about the malicious prosecution by the respondents. He further submitted that the petitioners have every right to adduce additional evidence pursuant to the amendment. However, the Trial court rejected the application. He further submitted that the respondents had yet to lead their evidence and, therefore, if the petitioners would be permitted to adduce the additional evidence, which would not cause any prejudice to the respondents. Hence, he has prayed for allowing the petition.

7. During the argument, he has taken me through the relevant orders and documents.

8. On perusal of the record, it clearly appears that after the closing of the evidence, the petitioners, on 28-07-2014, moved the application for amendment, which came to be allowed. Against the said order, the respondents had preferred the writ petition, which was dismissed on 09-09-2015. It also appears that pursuant to the said order, the petitioners have amended the suit plaint. Moreover, the respondents have yet to lead their evidence.

9. Having considered the said facts, in my view, it would be proper to permit the petitioners to adduce their evidence in support of their case pursuant to the amendment carried out in the plaint, and if they were permitted, no prejudice would be caused to the respondents. On the contrary, it would help to determine the facts in issues at the threshold. Therefore, in my view, the observations made by the trial Court that the said fact is not relevant to determine the fact in issue and the said evidence is not helpful to the petitioners to prove the fact of malicious prosecution was unwarranted. Based on the said findings, the impugned order cannot be sustained in the eyes of the law. Since the question of appreciation of the evidence would arise while determining the facts in issue.

10. In the aforesaid backdrop, I deem it appropriate to pass the following order:

- (i) The petition is allowed in terms of prayer clauses (i) and (ii). No costs.
- (ii) Needless to clarify, the suit has been pending for more than ten years. The trial Court is directed to expedite the matter as per the litigation policy.

Inform the Trial Court immediately.

(ABHAY J. MANTRI, J.)

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