



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.4438 OF 2016

Bhagwan s/o Babarao Pole

...PETITIONER

VERSUS

Punyarathabai w/o Bhagwan Kharal

...RESPONDENT

Advocate for the petitioner : Mr. R. J. Nirmal

Advocate for Respondent Sole : Mr. P. S. Agrawal

CORAM

: PRAFULLA S. KHUBALKAR, J.

DATE

: 13th JUNE 2025

ORDER :-

1. Heard Adv. R. J. Nirmal, learned counsel for the petitioner and Adv. P. S. Agrawal, learned counsel for the respondent sole.
2. The petitioner has challenged order dated 10.03.2016 passed by the Court of learned Civil Judge Junior Division, Aundha Nagnath, on an application at Exh.149 in Regular Civil Suit No.42/2010 thereby rejecting the application under Order VI Rule 17 of CPC filed by the defendant seeking amendment of the written statement.

3. The respondent is the plaintiff in Regular Civil Suit No.42/2010 who had filed suit for partition and separate possession alongwith declaration that the sale deeds dated 22.07.2011 and 07.12.2013 are not binding on the plaintiff. The petitioner is the defendant No.1 in the suit along with eight (08) other persons and he has filed his written statement dated 07.08.2015.

4. During the pendency of the suit, after the evidence was recorded, the petitioner/defendant No.1 filed an application (Exh.149) under the provisions of Order VI Rule XVII of Civil Procedure Code, 1908, for amendment of the written statement for adding subsequent developments as paragraph No.10A to the written statement. The application mentions that during the pendency of the suit, the plaintiff and the defendant No.2 and other persons have entered into a compromise which has affected the rights of the defendants with respect to the suit property and by way of proposed amendment, the defendant No.1 wants to bring on record this subsequent development which does not in any manner change the nature of the suit. The application was

opposed by the original plaintiff on the ground that the application is moved after the evidence is over and the compromise in between the plaintiff and other defendants does not in any way affect the rights of defendant No.1. The learned Trial Court passed order dated 10.03.2016 and rejected the amendment application. This order is assailed by way of instant petition.

5. Mr. R. J. Nirmal, learned counsel for the petitioner vehemently submitted that the impugned order rejecting the amendment is unsustainable in law since the Court has failed to note that the amendment to incorporate subsequent developments is necessary for complete adjudication of the controversy involved in the suit and the proposed amendment does not change the nature of the controversy. He vehemently submitted that the compromise entered in between the plaintiff and other defendants affects the rights of defendant No.1 and the proposed amendment to add an additional defence in the written statement is necessary for effective adjudication of the suit. He submitted that the impugned order is erroneous since the Trial Court failed to

consider the purport of provisions of Order VI Rule XVII of Code of Civil Procedure, 1908 and apply the position of law in that regard.

6. Per contra, Mr. P. S. Agrawal, learned counsel for the respondent strongly opposed the petition. He submitted that the proposed amendment is not at all necessary since the compromise in between the plaintiff and other defendants does not affect the rights of the defendant No.1/petitioner. He also vehemently submitted that the evidence in the matter is complete and the amendment at this stage is unwarranted.

7. Having heard the submissions advanced, the controversy now falls for my consideration.

8. It has to be noted that the petitioner/defendant No.1 sought to amend the written statement by adding paragraph No.10A by way of additional defence. The proposed amendment mentions a specific event in the nature of compromise in between the plaintiff and other defendants. This is a development which occurred during the pendency

of the Civil Suit and it is related to the rights of the parties with respect to their share in the suit property. As such, the proposed amendment does not in any manner change the nature of the controversy/suit neither it amounts to withdrawing any kind of admission. The reasoning given by the learned Trial Court that since the compromise is not binding on defendant No.1/petitioner, the amendment is unwarranted, appears to be an erroneous approach.

9. In view of the fact that the suit is for partition and separate possession of the ancestral property and since the plaintiff has compromised the suit with other defendants, the proposed amendment to incorporate this subsequent event is a relevant fact for determination of the controversy involved in the matter. A perusal of the proposed amendment shows that it is only by way of an additional fact to be added in the written statement and it does not change the nature of the defence put up by defendant No.1. Pertinently, the Trial Court observed that any amendment in plaint or written statement may be permitted at any stage if it is necessary for final and complete adjudication of the

controversy involved in the suit, however the Trial Court has adopted an extremely pedantic approach in refusing the proposed amendment in the written statement. Considering the overall factual aspects of the matter, I am of the considered opinion that the proposed amendment is necessary for complete and effective adjudication of the controversy involved in the suit. In the peculiar facts of this case, the rejection of application for amendment filed by defendant No.1 only because his cross-examination was over, demonstrates a pedantic approach on the part of the Trial Court.

10. In this regard, the position of law emanating from judgment of the Hon'ble Supreme Court in the matter of ***Life Insurance Corporation of India vs. Sanjeev Builders Private Limited and Another*** need to be taken into consideration. After considering a series of judgments dealing with the provisions of Order VI Rule XVII of the Civil Procedure Code, the Hon'ble Supreme Court jotted down few points by way of final conclusions, which are mentioned in paragraph No.71 of which relevant points are mentioned below:-

71. *Our final conclusions may be summed up thus:*

71.1.

71.2. *All amendments are to be allowed which are necessary for determining the real question in controversy provided it does not cause injustice or prejudice to the other side. This is mandatory, as is apparent from the use of the word 'shall', in the latter part of Order 6 Rule 17 CPC.*

71.3. *The prayer for amendment is to be allowed:*

71.3.1. *If the amendment is required for effective and proper adjudication of the controversy between the parties.*

71.3.2. *To avoid multiplicity of proceedings, provided*

- (a) the amendment does not result in injustice to the other side,*
- (b) by the amendment, the parties seeking amendment do not seek to withdraw any clear admission made by the party which confers a right on the other side, and*
- (c) the amendment does not raise a time-barred claim, resulting in divesting of the other side of a valuable accrued right (in certain situations)."*

11. In the light of these observations of the Hon'ble Supreme Court, the proposed amendment to the written statement in the instant

case being necessary for determining the real questions in the controversy need to be allowed.

12. For the reasons mentioned above, the writ petition is allowed. The impugned order dated 10.03.2016 passed by the Court of learned Civil Judge Junior Division, Aundha Nagnath, on an application at Exh.149 in Regular Civil Suit No.42/2010 is quashed and set aside and the application for amendment at Exh.149 is allowed.

13. No order as to costs.

[PRAFULLA S. KHUBALKAR, J.]