



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 12516 OF 2022

Mohd Aftab Idris Kachhi

VERSUS

Bhagyashree Satyanarayan Polasa And Others

• Mr. S. S. Rathi, Advocate for the Petitioner

CORAM : R. M. JOSHI, J

DATE : FEBRUARY 17, 2025

PER COURT :

1. None for the for the Respondents. On the previous date of hearing, time was granted at the instance of Respondents Counsel with clarification that no further accommodation shall be granted and that Petition shall be heard finally at the stage of admission.

2. This Petition takes exception to the orders passed below Exh. 60 dated 12.10.2022 whereby Trial Court allowed the application for amendment to the plaint under Order VI, Rule 17 of Code of Civil Procedure. Pursuant to the said order, application Exh. 71 came to be moved on 09.11.2022 for seeking permission to further cross-examine Plaintiff. Since application Exh. 71 came to be dismissed on the same

day, this Petition is filed not only taking exception to the order but also exception to the earlier order.

3. Learned Counsel for the Petitioner submits that it is within the right of the Petitioner/Defendant to raise objection with regard to the amendment permitted by the Trial Court i.e., objection to the limitation to the prayer sought by way of amendment. It is his submission that in any case the right of the Petitioner to challenge this order cannot be said to have been waived. On the point of rejection of Exh. 71, it is his submission that once the Plaintiff has permitted to amend the plaint, it is open for the Defendant to cross-examine him.

4. Perusal of the impugned order shows that prayer made by the Defendant vide Exh. 71 came to be rejected for the reason that Plaintiff has not led additional evidence pursuant to the amendment to the plaint. It is held that there is no proof given of the Plaintiff of the said amended fact. Learned Trial Court however has ignored the fact that the Trial Court has permitted the Plaintiff to amend the plaint and therefore, it was open for the Defendant to further

cross-examine the Plaintiff to the extent of amendment which was allowed.

5. Thus, this Court finds substance in the challenge to order dated 09.11.2022. Hence, order dated 09.11.2022 passed below Exh. 71 stands set aside. Petitioner/Defendant is permitted to cross-examine Plaintiff. Needless to say that the further cross-examination shall be restricted to the amended portion of the plaint and that Defendant not to be permitted to cross-examine the witness in respect of any other matter.

6. As far as order dated 12.10.2022 passed below Exh. 60 is concerned, since no challenge was raised to the said order and application Exh. 71 came to be filed for seeking permission to cross-examine on the basis of amended plaint, this Court finds no reason to cause interference in the said order.

7. It is clarified that all the objections sought to be raised by the Petitioner/Defendant in respect of merit of the amended portion of plaint, are kept specifically open.

8. In view of above, Petition stands disposed of.

(R. M. JOSHI, J.)