



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 690 OF 2020

Kazi Shamim Ahamad Kazi MajahroddinPetitioner

VERSUS

Manikrao Bhaurao Dongare & othersRespondents

Mr. S. R. Shirsat, Advocate for the Petitioner.

Mr. S. K. Shirsikar, AGP for the State.

Mr. N. L. Jadhav, Advocate for Respondent Nos. 1 and 2.

CORAM : R. M. JOSHI, J.

DATE : 19th AUGUST, 2025.

PER COURT :

1. In this Petition, two orders passed on 10.04.2018 and 24.06.2018 passed below Exhibits 37 and 46 respectively in Regular Civil Suit No. 124/2015 whereby the Application filed by the Plaintiff for amendment to the plaint came to be dismissed, are sought to be challenged by the Petitioner.

2. Petitioner/Plaintiff filed suit for perpetual injunction against Defendants with averment that Defendants were attempting to encroach upon the suit property. An Application was moved vide Exhibit 37 seeking amendment to state that during the pendency of the suit Defendant Nos. 1 and 2 have carried out construction on the suit property and Defendant No. 3 was attempting to encroach upon

it. This Application came to be rejected by the Trial Court by order dated 10.04.2018. Instead of challenging the said order, another Application was filed vide Exhibit 47 with same averments and for the same relief. Obviously, the Trial Court has rejected the said Application by applying the principle of res-judicata.

3. Learned counsel for Petitioner/Plaintiff submits that in so far as the order passed vide Exhibit 37 is concerned, the said order itself indicates that the learned counsel for Plaintiff was not heard. It is his submission that since the order came to be passed without giving an opportunity of hearing to the Plaintiff, the said order cannot sustain and deserve to be set aside.

4. Learned counsel for Respondents supported the impugned orders. It is contended that the relief of addition of Chief Executive Officer as party Defendant cannot be permitted. It is his submission that the Trial Court has rejected the Application on merit though in absence of learned counsel for the Plaintiff.

5. There is no dispute about the fact that when the order was passed on 10.04.2018 vide Exhibit 37, learned counsel for Petitioner/Plaintiff was absent. Thus, this Court finds substance in the contention of learned counsel for the Petitioner that the Plaintiff was denied fair opportunity to substantiate his case. Only for this

reason and without going into the merits of the Petition, this Court finds it appropriate to set aside the order. Consequent order passed vide Exhibit 47 becomes irrelevant. Challenge to the order passed in the year 2018 has been raised in the year 2020 that too after preferring Application Exhibit 47. In all probabilities, Application Exhibit 47 is filed under wrong advice. Still since the order passed below Exhibit 37 is challenged after two years, this Court finds it appropriate to impose cost which is quantified at Rs. 2,000/- payable to the Advocates' Association of Bombay High Court, Bench at Aurangabad.

6. Since the suit is of the year 2015, the Trial Court is directed to decide the Application expeditiously and in any case within a period of three months from today. Parties are directed to appear before the Trial court on 15.09.2025.

(R. M. JOSHI)
Judge

dyb