



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

921 WRIT PETITION NO. 732 OF 2024

RAOSAHEB NAGORAO KAMBLE
VERSUS
LAYAKPASHA DASTGIR SAYYED AND ANOTHER

.....

Mr. T. M. Venjane, Advocate for the Petitioner

Ms. Madhaveswari S. Mhase, Advocate for respondent Nos.1 and 2.

CORAM : R. M. JOSHI, J.

DATE : 21st FEBRUARY, 2025

PER COURT :-

1. This petition takes exception to the order dated 30/10/2023 passed in R.C.S. No. 119/2016 rejecting application filed by the plaintiff under Order 6 Rule 17 of the Code of Civil Procedure seeking permission to carry out proposed amendment to the plaint. This application came to be rejected by the Trial Court on merit as well as in view of the fact that trial is concluded.

2. Learned counsel for the petitioner submits that though no dispute can be made with regard to the proposition of law that after the conclusion of trial and when the matter is posted for the judgment, the parties have no further rights or privileges in matter. However, it is his contention that by relying upon the roznama before the Trial Court that it can be seen that the stage on 30/10/2023 was for the argument. Thus, it

is his contention that the above proposition would not apply to the present case. He, further contends that in the interest of justice amendment be allowed.

3. Learned counsel for the respondents/original defendants opposed the petition and supported the impugned order by relying upon the judgment of the Hon'ble Supreme Court in case of ***Andhra Pradesh Southern Power Distribution Power Company Limited (APSPDCL) and another Vs. Hinuja National Power Corporation Limited and Another, (2022) 5 SCC 484***, wherein reference is made of the judgment of Hon'ble Supreme Court in case of ***Arjun Singh Vs. Mohindra Kumar & Ors, 1964 AIR 993***. It is thus argued by the learned counsel for the respondents that once the trial is concluded and the proceeding is kept for judgment, it was not open for the Trial Court even entertain such application. Hence, no interference can be required in the impugned order.

4. Perusal of the photo copies of roznama in R.C.S. No.119/2016 shows that from 06/09/2023 the said proceeding was for judgment. It is at this stage application Exhibit 95 came to be filed under Order 6 Rule 17 of CPC to amend the plaint. Hon'ble Supreme Court in case of ***Arjun Singh Vs. Mohindra Kumar*** (supra) has held as follows :

"94. In this respect, we will refer to the observations made by this Court in the case of Arjun Singh v. Mohindra Kumar & Ors.15. Though the issue involved in the said case is distinct

than the issue involved in the present case, we find that it will be apposite to seek guidance from the observations made by this Court, while construing the provisions of Order IX and Order XX of the Code of Civil Procedure, 1908 (CPC). The relevant extract reads thus:

"19. .. In the present context when once the hearing starts, the Code contemplates only two stages in the trial of the suit: (1) where the hearing is adjourned or (2) where the hearing is completed. Where, the hearing is completed the parties have no further rights or privileges in the matter and it is only for the convenience of the Court that Order 20 Rule 1 permits judgment to be delivered after interval after the hearing is completed. It would, therefore, follow that after the stage contemplated by Order IX. Rule 7 is passed the next stage is only the passing of a decree which on the terms of Order IX. Rule 6 the Court is competent to pass. And then follows the remedy of the party to have that decree set aside by application under Order 9 Rule 13. There is thus no hiatus between the two stages of reservation of judgment and pronouncing the judgment so as to make it necessary for the Court to afford to the party the remedy of getting orders passed on the lines of Order 9 Rule 7. We are, therefore, of the opinion that the Civil Judge was not competent to entertain the application dated May 31, 1958 purporting to be under Order 9 Rule 7 and that consequently the reasons given in the order passed would not be res judicata to bar the hearing of the petition undo Order 9 Rule 13 filed by the appellant."

[emphasis supplied]

5. Thus in view of the said position of law settled by the Hon'ble Supreme Court once the trial is concluded and the matter is for judgment, it is not open for the Court to entertain any application muchless application for amendment to the plaint. The Trial Court has taken into consideration the said fact by recording that the application has been filed when the matter is posted for judgment, with a specific observation that trial is concluded. Hence, rejection the application

cannot be faulted with.

6. The contention of learned counsel for the petitioner that at the subsequent stage the matter was again shown for argument holds no merit for the reason that the application in question was filed admittedly the matter was for the judgment and hence it could not have been entertained.

7. Hence, petition stands dismissed.

(R. M. JOSHI, J.)

ssp