



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO. 7957 OF 2019

Pralhad S/o Dayaram Dhore
 age : 50 years, Occ. Agriculturist,
 R/o at Post Shivapur, Akola,
 Tq & Dist. Akola



.. Petitioner

Versus

Vitthal S/o Ashokrao Patil
 age : 29 years, Occ : President of
 Akola District Labour Co-operative
 Society Federation Limited,
 R/o Patrakar Colony, Akola,
 Tq. & Dist. Akokla



.. Respondent

 Mr. S.A. Mohta, Advocate for petitioner.
 Mr. M.G. Sarda, Advocate for respondent.

CORAM : ABHAY J. MANTRI, J.

DATED : FEBRUARY 26, 2025

ORAL JUDGMENT

Heard. **Rule.** Rule made returnable forthwith. Heard finally with the consent of the learned counsel appearing for the parties.

(2) The petitioner is challenging the orders dated 12/10/2018 passed below Exh.21 and 03/12/2018 passed below Exh.22 by learned 5th Joint Civil Judge Senior Division, Akola in Special Civil Suit No.56/2017, thereby rejected the application to permit him to amend the written statement and to file a counterclaim.

(3) The respondent/original plaintiff has filed a suit for damages and compensation for making false complaints against him and publishing defamatory news in the daily newspapers, thereby defaming his image in society. Also, the respondent was removed from the Society without any reason. The removal would affect his reputation in society, so he filed a suit.

(4) The petitioner/original defendant appeared and filed a written statement on 16/11/2017. Based on the pleadings, the learned Trial Court framed issues on 14/04/2018. On 20/07/2018, the petitioner moved an application for permitting him to amend the written statement to explain the facts raised in the plaint by incorporating the same in the written statement; said application was rejected on 12/10/2018. Thereafter, the petitioner/original defendant moved an application on 02/11/2018 to permit him to file a counterclaim; the said application was also rejected on 03/12/2018. Aggrieved by both the orders, the petitioner has approached this Court in the writ petition.

(5) Learned counsel for the petitioner/original defendant, upon instruction, submitted that in view of the mandate laid down by the Hon'ble Supreme Court in **Ashok Kumar Kalra vs. Wing CDR. Surendra Agnihotri and others [SLP (C) No.23599 of 2018]**, the petitioner "*does not press*" the challenge to the order dated 03/12/2018 passed below Exh.22 to permit him to file a counterclaim.

His statement is accepted. In view of this, the petition is dismissed as not pressed to the extent of challenging the order dated 03.12.2018 passed below Exh. 22.

(6) He further canvassed that the petitioner has moved another application to permit him to amend the written statement. However, during the argument, he restricts his claim to the extent of para 19 onwards. He "does not press" paras no. 14 and 14A in the said amendment application. It was further argued that by way of the proposed amendment, the petitioner was to explain the grounds raised in the plaint and wanted to incorporate the same in his written statement. The proposed amendment is necessary to resolve the controversy between the parties. Therefore, he has prayed for allowing the petition to that extent.

(7) *Per contra*, learned counsel for the respondent/original plaintiff strenuously opposes the petition on the ground that the Trial has been commenced and no reason has been stated in the application for permitting him to amend the written statement after commencement of the trial. He further contended that the petitioner/original defendant has not stated that in spite of due diligence, he could not raise the said facts in the written statement before the commencement of the trial. Therefore, he has prayed for the dismissal of the petition.

(8) I have appreciated the rival contentions of the parties and perused the impugned orders and record.

(9) It is pertinent to note that the learned counsel for the petitioner "does not press" the order passed below Exh.22. Secondly, it is undisputed that on 14/04/2018, the issues were framed. The application for amendment was filed after the trial had commenced. Therefore, as per Order VI Rule 17 of the Code of Civil Procedure (CPC), it was incumbent on the petitioner to state that in spite of due diligence, he could not have raised the said matter before the commencement of the trial. However, on perusal of the application, no reason has been given for filing the application for amendment in the written statement after the commencement of the trial. On the contrary, it seems that the facts in the proposed amendment were well within the knowledge of the petitioner/original defendant before filing the written statement. Thus, the petitioner failed to demonstrate that in spite of due diligence, he could not have raised the said matter before the commencement of the trial.

(10) It is a well-settled position of law that after commencement of the trial, the party applying for amendment must satisfy the Court that in spite of due diligence, the proposed amendment could not have been raised before the commencement of the trial. However, nothing has been brought on record to show that despite due diligence, the petitioner could not have raised the said

facts in his written statement. The reasons stated in the application that the petitioner was to explain the grounds raised in the plaint, so he wanted to incorporate the same in his written statement. The said reason is not justifiable since the facts were well within the knowledge of the petitioner before the filing of the application. Therefore, I do not find substance in the contention of learned counsel for the petitioner in that regard.

(11) Perused the impugned order passed below Exh.21, wherein learned Trial Court has categorically observed *that "the contents which the petitioner has mentioned in the application by way of proposed amendment, was well within his knowledge at the time of filing of the written statement. No reason was brought on record as to why he has not incorporated the same in the written statement and further observed that the amendment would change the nature of the suit."* Therefore, the application was rejected. Considering the facts above, no illegality or perversity is found in the impugned order; as against this, the impugned order is well-reasoned, and no interference is required in it. As such, the petition, being bereft of merit, stands dismissed. The stay, if any, granted stands vacated. Inform the learned trial Court accordingly.

Rule is discharged. No costs.

[ABHAY J. MANTRI, J.]