

Hasinabee Vs. Mohd.Sharif & others
CNR No. MHBU010000182014

-ORDER BELOW EXH.15-
(Passed on:-13 day of February, 2020)

This application has been filed by defendant no.1 before the trial Court for amending a written statement.

01. Learned advocate for the appellant/defendant contended that in written statement, appellant/defendant has already taken a plea that she received suit property from the plaintiff by gift deed. However, details of the gift deed such as stamp paper, witnesses were not mentioned in written statement. Moreover, there is endorsement in revenue record about mutation of the basis of gift deed. Defendant no.1 is Pardanasheen woman. In absence of these details, her written statement can not be complete. The error has taken place due to fault on the part of the advocate who was representing appellant/ defendant in trial Court. Learned advocate for the appellant relied on the judgment in **Chakreshwari Construction Pvt. Ltd. Vs. Manoharlal reported in 2017(5) Mh.L.J. 195**. In this case, Hon'ble Apex Court has held that amendment can be permitted even at appellate stage. He also relied on the judgment of Hon'ble Court in **Narayan Madhavrao Pole Vs. Sumanbai w/o Uttamrao Napte reported in 2012(1) Mh.L.J. 316**. In this case, amendment in pleading was allowed for amplification of the case. He also relied of judgment of Hon'ble High Court in **Piedade Fernandes Vs.**

Charlene Leita reported in 2012(1) Mh.L.J. 317. In this case, Hon'ble Bombay High Court has allowed the defendant to incorporate facts which were relevant for deciding the matter. He also relied on the judgment of Hon'ble Bombay High Court in **Teotonio Faustino Vas and another Vs- Ana Maria Podrigues and others reported in 2019 (1) Mh.L.J. 668**. In this case, Hon'ble Bombay High Court has held that for amending written statement the defendant need not show as to what prejudice will be caused if application for amendment is not allowed. Learned advocate for the appellant/defendant therefore submitted that the application be allowed and the appellant be permitted to amend the written statement.

02. As against this, learned advocate for respondent no.1 /plaintiff submitted that dilatory tactics are followed by the appellant. He pointed out that the suit is already decreed and it is intention of appellant/defendant not to permit respondent no.1 to enjoy fruits of decree. He submitted that all facts which the appellant/defendant wants to incorporate in written statement were known to her when written statement her was filed. In view of provisions of Order 6 Rule 17 of the Code of Civil Procedure, after commencement of trial the appellant/defendant can not be permitted to amend her written statement unless she shows that the proposed amendment could not have been discovered by the appellant by exercising due diligent before framing of issues, or, she should satisfy that the proposed amendment is in nature of subsequent development. Learned advocate for respondent no.1 therefore, prayed that the claim be rejected.

03. I have given anxious consideration to submissions made at bar. It is worthwhile point to mention that the appellant had already taken stand that gift deed was executed in her favour by respondent no.1. All details which she wants to incorporate in her written statement were within her knowledge. Proposed amendment is not in nature of subsequent development. There is nothing in the application which would satisfy the Court as to why proposed amendment could not have been introduced earlier. Issue was already framed on the point of gift placing burden on defendant no.1. Defendant no.1 did not produce gift deed before the leaned trial Court.

04. In **Chakreshwari** (cited supra) the facts were different. In that case, appellant had recently, came to know about change in the name of shop of the respondent. Therefore, the fact which appellant wanted to introduce had came to his knowledge recently. In this back drop, ratio in case of **Chakreshwari** (cited supra) would not assist the appellant. In **Narayan** (cited supra) application for amendment was moved promptly soon after application for temporary injunction was rejected. The said amendment application was merely rejected on the ground of delay. It appears that said application was moved before commencement of trial. In **Piedade Fernandes** (cited supra) it was argued that the proposed facts which were required to be incorporated came to knowledge of the petitioner only at the time when the appeal was pending. Obviously these facts came to knowledge of appellant during pendency of the appeal and therefore could not have been

introduced in pleadings before trial Court. From the judgments discussed above, it is clear that amendment can be moved at any stage even at the appellate stage. However, amendment can not be insisted as a matter of right. The concerned party will have to make case therefor. If facts subsequent to filing of the appeal have bearing on issues involved in the suit, they can be incorporated at appellate stage. Even the fact which would not have been known by the party even after exercising due diligent can be incorporated. In hand case in, the facts were within the knowledge of the appellant right from the beginning. It did not come to knowledge of the appellant after filing of the appeal. Consequently, I find that no case is made out for amendment in written statement at this stage. Hence, I pass following order:-

-ORDER-

01. Application (Exhibit No.15) is rejected.

Date :-13/02/2020.

(Rohan B.Rehpade)
Adhoc District Judge-1,
Buldana.