HIGH COURT OF JUDICATURE AT BOMBAY

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

WRIT PETITION NO. 1240/2019

Madhukarrao S/o Gopalrao Deshmukh
..VS..
Sau. Kusumtai W/o Madhaorao Deshmukh & ors.

Office Notes, Office Memoranda of Coram, appearances, Court's orders of directions and Registrar's orders | Court's or Judge's orders

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Shri O.Y. Kashid, Advocate for the petitioner

CORAM : Z.A.HAQ, J.
DATED : 25/02/2019

The respondent nos. 2 and 3 had filed an application (Exh. 87) under Order 1 Rule 10 of the Code of Civil Procedure praying that they be permitted to participate in the proceedings as defendants. This application was allowed by the learned trial Judge by the order dated 24/07/2018, and the respondent no. 1 (original plaintiff) was directed to carry out the amendment. The respondent no. 1 – plaintiff failed to carry out the amendment within 14 days i.e. till 07/08/2018. The plaintiff filed an application (Exh. 92) on 27/09/2018 seeking permission to amend the plaint as per the order dated 24/07/2018. This application is allowed by the trial Court by the order dated 03/10/2018. The defendant no. 2 has challenged the above two orders.

The facts on record show that the defendant no. 2 accepted the order passed by the trial Court on the application (Exh. 87) on 24/07/2018. The defendant no. 2 had not made any grievance against the order dated 24/07/2018, and when the plaintiff filed the application

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(Exh. 92) seeking permission to amend the plaint, the defendant no. 2 opposed the application, however, nowhere requested the trial Court to postpone the hearing of the application (Exh. 92) to enable the defendant no. 2 to challenge the order dated 24/07/2018. At this stage, I am not inclined to examine the legality of the order passed by the trial Court on 24/07/2018, at the behest of the petitioner – defendant no. 2.

Challenge to the order passed on the application (Exh. 92) also does not require any consideration. By the order dated 24/07/2018, the trial Court allowed the application (Exh. 87) which was filed by the respondent nos. 2 and 3 and they are participating in the proceedings as the defendants. The delay on the part of the plaintiff in amending the plaint cannot frustrate the rights of the respondent nos. 2 and 3 which have fructified as per the order dated 24/07/2018.

In view of the above, I am not inclined to interfere with the impugned orders.

The writ petition is **dismissed**. No costs.

JUDGE

Ansari

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