



Common Order Passed Below Exh.43 and 44.

(Passed on 16-08-2024)

01. The application below Exh.43 is filed by the plaintiff for setting aside the amendment order passed below Exh.41. Whereas, the application below Exh.44 is filed by the defendant for permission to carry out amendment order passed below Exh.41.

02. Perused both the applications. Heard, both the Ld. Advocates of the plaintiff and defendant. The plaintiff and defendant filed contrary applications in respect of order passed below Exh.41. Therefore, both the applications are taken up for decision by common order.

03. The plaintiff contended that, order below Exh.41 is passed on 20/02/2020. Since from then, the defendant failed to carry out the said amendment. Despite laps of more than 3 years, the defendant has not incorporated the said amendment in its written statement. Therefore, it is necessary to set aside the said order and the application below Exh.41 needs to be rejected. The defendant filed reply and strongly opposed the application. It contended that, it has filed the application for permission to carry out the said amendment. Therefore, he prayed to reject the application.

04. The defendant in its application vide Exh.44 contended that, inadvertently it has not made compliance of the said order of amendment. The plaintiff has taken objection. However, the plaintiff has not provided copy of the said objection. During the mean time, the

defendant was not aware to make amendment. Lastly, he prayed to allow the application. The plaintiff filed reply and strongly opposed the application. He contended that, the defendant filed present application after filing of application by the plaintiff for setting aside the order of amendment for non compliance. The defendant had not shown bonafide cause which prevented it to carry out the amendment. Therefore, the present application is liable to be rejected.

05. Perused the record, specifically the order passed below Exh.41. It shows that, the defendant filed application vide Exh.41 for amendment of written statement. My Ld. Predecessor allowed the application on merit by passing order dated 20/02/2020. Since from then, the matter was pending for compliance of the said order. It is not in dispute that, during the year 2020-21, the Court was not functioning due to Covid-19.

06. As stated earlier, the amendment application Exh.41 of the defendant is already allowed. Now, there is a question as to the permission to carry out the said amendment. The defendant stated that, it inadvertently could not carry out the amendment. Moreover, the defendants explained the delay in the said application. Thus, this Court is of opinion that the grounds mentioned in the application Exh.44 are sufficient for the defendant to carry out the amendment. It is pertinent to note that, the permission to carry out the amendment is a procedural aspect. The Court needs to take liberal approach while deciding the such application.

07. On perusal of record, it appears that, the issues are yet to be framed. It means that, the trial of the suit is not commenced. Further, if the application is allowed, no prejudice will be caused to the plaintiff. On the other hand, if application is rejected, the defendant will seriously prejudice. As stated earlier the order below Exh.41 is passed on 20/02/2020. Since from then, it has not complied by the defendant. Therefore, there is a huge delay on the part of defendant. Thus, considering the delay, the heavy costs needs to be saddled on the defendant. Hence, considering the above mentioned findings, I pass the following order;

ORDER

01. The application Exh.43 is rejected.
02. The application Exh.44 is allowed subject to costs of Rs.3,000/- (in words Rs. Three Thousand only) to be paid to the plaintiff.
03. Subject to payment of aforesaid costs, the defendant is permitted to carry out the amendment order passed below Exh.41, within a period of 15 days from the date of this Order.

Date 16-08-2024

(Shahaji D. Bhosale)
Civil Judge (Jr.Div.) Wani.

I, Rajendra Sheshraoji Pawade, Stenographer of (Civil Judge (Jr.Dn.) & J.M.F.C. Wani) affirm that, the contents of this PDF are same words for words, as per the original order.