

Shree Educational Trust And Another Vs Dombivali Shikshan Prasarak Mandal And Others

Court: Bombay High Court

Date of Decision: Feb. 12, 2025

Acts Referred: Code of Civil Procedure, 1908 – Order 6 Rule 7, Order 6 Rule 17, Order 8 Rule 1

Hon'ble Judges: N. J. Jamadar, J

Bench: Single Bench

Advocate: Shyam Dewani, Chirag Chanani, Dashang Doshi, Dewani Associates, S.C. Naidu, Divya Yajurved, Anjali Yajurved

Final Decision: Dismissed

Judgement

N. J. Jamadar, J

1. Rule. Rule made returnable forthwith. With the consent of the parties, heard finally at the stage of admission.

2. The Petitioners - defendant Nos. 1 and 4 take exception to an order dated 17th August, 2024 passed by the learned Civil Judge, Kalyan whereby

the Application (Exh. 92) preferred by defendant Nos.1 to 4 to take on record and read the written statement filed by defendant Nos. 1 to 4 on 30th

March, 2019 as written statement of the defendants to the amended plaint, came to be rejected.

3. Shorn of unnecessary details, background facts leading to this petition can be stated as under:-

3.1 Respondent No. 1 is a trust registered under the Maharashtra Public Trusts Act, 1950. The defendant No. 1, is also a public charitable trust. On

20th July, 2012 an agreement was executed between respondent No. 1/ plaintiff and defendant No. 1 for construction of a school on the property of

the plaintiff, and operation and management of the said school i.e. Prabhakar Desai International School, Dombivali (E), (PDIS).

3.2 Disputes arose over the performance of the terms of the said agreement between the plaintiff and defendant No. 1. On 24th April, 2015 the

plaintiff terminated the said agreement dated 20th July, 2012 and revoked the license granted to defendant No. 1 to operate the said school, w.e.f. 5th

May, 2015.

3.3 Alleging breach of the terms of the contract to run and conduct PDIS, the plaintiff instituted the suit for recovery of a sum of Rs. 9,30,95,060/-,

along with interest @ 12% p.a. towards construction of PDIS building and the entire project, directions to the defendants to handover the affairs of the

said school, to remove themselves from the premises of PDIS and the consequential relief of injunction.

3.4 The defendants appeared in response to the suit summons. Various interlocutory applications were filed in the said suit.

3.5 As the defendants did not file the written statement on 19th January, 2016, the plaintiff filed an application to pass an order against the defendants. On 3rd March, 2016, the learned Civil Judge passed an order against the defendants. On 29th

August, 2018, the plaintiff filed an application for amendment in the plaint. The said application was allowed by an order dated 19th January, 2019

subject to the payment of costs. Eventually, on 31st January, 2019, the plaintiff amended the plaint.

3.6 On 30th March, 2019 an application was filed on behalf of the defendants to condone the delay in filing the written statement sans the signatures

of the defendants. In the month of April, 2019, the defendants, filed application to permit the defendants to file the written statement by condoning the

delay therein. By an order dated 29th November, 2022 the said application came to be rejected. In meanwhile, the plaintiff adduced evidence of its

first witness in the form of affidavit in lieu of examination in chief.

3.7 On 9th March, 2023 the defendants filed another application for setting aside the order (Exh.85). The said application

was also rejected by the learned Civil Judge by an order dated 24th June, 2023.

3.8 The defendants carried the matter before this Court. By an order dated 6th September, 2023, in Writ Petition No. 10917 of 2023, this Court

rejected the petition finding no infirmity in the order passed by the trial Court. A Special Leave Petition (C) No. 22333 of 2023 preferred thereagainst

was also dismissed by the Supreme Court on 19th February, 2024.

3.9 Undeterred, the defendants filed application (Exh.92), to read the written statement which was tendered along with the application dated 30th

March, 2019, as the written statement of the defendants to the amended plaint. It was, inter alia, contended that post the amendment in the plaint, the

suit ought to have been posted for written statement of the defendants to the amended plaint. Nonetheless, since the written statement was tendered

by the defendants, along with application dated 30th March, 2019, which was within 90 days from the date of amendment in the plaint, the defendants

were entitled in law to seek the relief of reading the said written statement to the extent of amended plaint. If the written statement is not read, even

to this limited extent, the defendants would suffer an irreparable loss.

3.10 The plaintiffs resisted the application.

3.11 By the impugned order, the learned Civil Judge was persuaded to reject the application observing, inter alia, that the plaintiffs had already

amended the plaint before the defendant tendered an application for condonation of delay in filing the written statement. The written statement which

was tendered along with the said application, also contained pleading in relation to the amended portion of the plaint. Since the application to set aside

the written statement order and permit the defendants to file written statement, was twice rejected by the trial Court and the last order was

upheld by this Court and Supreme Court, there was no substance in the contention on behalf of the defendants that they were entitled to file additional

written statement to the amended plaint.

4. Being aggrieved, the defendants have again invoked the writ jurisdiction of this Court.

5. I have heard Mr. Shyam Dewani, the learned counsel for the petitioners, and Mr. S.C.Naidu, learned counsel for the respondent No. 1.

6. Mr. Dewani, the learned counsel for the petitioners, strenuously submitted that the defendants are entitled to file additional written statement to the

amended plaint, notwithstanding the fact that they had not filed the written statement to the original plaint or their right to file written statement stood

foreclosed. Amplifying the submission, Mr. Dewani would urge that the right to file additional written statement does not emanate from the right to file

the written statement. It is essentially consequential to the amendment in the plaint.

7. As a second limb of the submission, Mr. Dewani would urge that the interdict contained in the order VIII Rule 1 of the Code of Civil Procedure,

1908 does not apply to the additional pleading in response to the amendment in the plaint. Therefore, the aspect of delay in filing additional written

statement to the amended plaint is also of no significance.

8. To buttress these submissions, Mr. Dewani placed a strong reliance on the judgment of the Supreme Court in the case of Gurdial Singh and Others

vs. Raj Kumar Aneja and Ors. (2002) 2 SCC 445, orders passed by the Delhi High Court in the case of Raman Sharma vs. Prem Lata Prabhakar and

Ors, CS(OS) No.20/2018 Dt.30/01/2024, Himachal Pradesh High Court in the case of Varinder Kumar vs. Santokh Singh CMPMO No. 534 of

2018 Dt.25/03/2019 and a judgment of this Court in the case of Orchid Enclave Co.Op. Hsg. Society vs. Neelkamal Realtors and Erectors India Pvt.

Ltd. and Ors. IANo.3865/2022 Dt.13/10/2022.

9. Mr. Dewani, the learned counsel for the petitioners, further submitted that the substance of the matter ought to be taken into account.

Incontrovertibly, the written statement was tendered along with the application dated 30th March, 2019. The said written statement forms an integral

part of the record of the trial Court. Thus, no prejudice would be caused to the plaintiff in reading such portions of the said written statement which

deal with the averments in the plaint, incorporated by way of amendment. This would also promote the cause of the decision of the suit on merit. Thus,

the learned Civil Judge committed a manifest error in taking a hyper-technical view of the matter, urged Mr. Dewani.

10. Mr. Naidu, learned counsel for the respondent No. 1, stoutly controverted the submissions on behalf of the petitioners. Mr. Naidu would urge that

the defendants have distorted the facts. The defendants have approached the Court as if they are seeking permission to file additional written

statement in response to the amendment in the plaint. However, the written statement which was tendered along with the application dated 30th

March, 2019 was, in fact, a composite written statement to both the original and amended plaint. The said written statement was tendered after the

amendment was carried out on 31st January, 2019. It was that written statement which the trial Court, this Court and Supreme Court declined to take

on record.

11. Inviting the attention of the Court to the prayer in the instant application to the effect that the written statement filed by the defendants on 30th

March, 2019 be read, recorded and exhibited and be considered as written statement of the defendants to the extent of newly added paragraphs and

prayer by virtue of amendment carried on 30th January, 2019, Mr. Naidu would urge that the entire endeavour of the defendant is to resurrect the

written statement, which stood dusted by the orders passed by the Courts. Mr. Naidu, thus, submitted that the decisions on which reliance was placed

by Mr. Dewani, have no bearing on the controversy in the instant case. Since the application has been filed after conclusion of the oral evidence of the

plaintiff, even otherwise, the prayer does not deserve to be countenanced as it lacks both in diligence and bonafide, urged Mr. Naidu.

12. In the narration of facts, I have elaborately noted the time-line, on purpose. The core controversy that crops up for consideration is whether the

defendant whose right to file the written statement stood forfeited and the said order attained finality upto Supreme Court, is entitled to file written

statement, by way of consequential pleading, to the amended plaint ?

13. The right of the Defendant to amend the written statement (already filed) or file an additional written statement to deal with the averments in the

amended plaint can hardly be questioned. However, the extent of and limitations on the said right to file additional pleadings deserve consideration.

14. Once the Court permits amendment in the pleadings, the opponent deserves an opportunity to meet the amended case or defence as the case may

be, as a matter of fair procedure. Generally, the Defendant is granted an opportunity to file additional written statement consequent to the amendment

in the plaint. Naturally, the additional written statement to be filed post amendment in the plaint, ought to be confined to the matter which has been

introduced by way of amendment in the plaint. The additional written statement, therefore, cannot travel far beyond the amended plaint, and introduce

completely new matters which were not adverted to in the amended plaint, or for that matter, in the original written statement.

15. Two provisions of the Code, 1908 deserve to be noted. Under Order VI Rule 7, it is provided that no pleadings shall, except by way of

amendment, raise any new ground of claim or contain any allegation of fact inconsistent with the previous pleadings of the party pleading the same.

16. Order VIII Rule 9 of the Code, bars pleadings subsequent to the written statement, save and except by way of defence to suit or counter claim. It

reads as under :

“9. Subsequent pleadings “No pleading subsequent to the written statement of a defendant other than by way of defence to set-off or counter claim shall be

presented except by the leave of the Court and upon such terms as the Court thinks fit; but the Court may at any time require a written statement or additional written

statement from any of the parties and fix a time of not more than thirty days for presenting the same.”

17. The aforesaid provisions of the Code, if construed in juxtaposition, would indicate that the amendment in the original written statement or the

additional written statement has to be essentially consequential to the amended plaint. Lest, disguised as amendment in the written statement or

additional written statement, post amendment in the plaint, completely new matters could be brought on record.

18. The decision of the Supreme Court in the case of Gurdial Singh and Ors. (supra), on which reliance was placed by Mr. Dewani, expounds the

nature of the amendment in the written statement in response to the amendment in the plaint and the limits thereof, in the following words :

“19. When one of the parties has been permitted to amend his pleading, an opportunity has to be given to the opposite party to amend his pleading. The opposite

party shall also have to make an application under Order 6 Rule 17 of the CPC which, of course, would ordinarily and liberally be allowed. Such amendments are

known as a consequential amendments. The phrase “consequential amendment” finds mention in the decision of this Court in Bikram Singh and Ors. V/s. Ram Baboo

and Ors. (1982) 1 SCC 48. The expression is judicially recognized. While granting leave to amend a pleading by way of consequential amendment the Court shall see

that the plea sought to be introduced is by way of an answer to the plea previously permitted to be incorporated by way of amendment by the opposite party. A new

plea cannot be permitted to be added in the garb of a consequential amendment, though it can be applied by way of an independent or primary amendment.

20. Some of the High Courts permit, as a matter of practice, an additional pleading, by way of response to the amendment made in the pleadings by opposite party,

being filed with the leave of the Court. Where it is permissible to do so, care has to be taken to see that the additional pleading is confined to an answer to the

amendment made by the opposite party and is not misused for the purpose of setting up altogether new pleas springing a surprise on the opposite party and the

Court. A reference to Order VI Rule 7 of the CPC is apposite which provides that no pleading shall, except by way of amendment, raise any new ground of claim or

contain any allegation of fact inconsistent with the previous pleadings of the party pleading the same.Ã¢â¬â€œ

(emphasis supplied)

19. The decision of this Court in the case of Orchid Enclave Co-op. Hsg.Soc. (supra), supports the submission of Mr. Dewani that notwithstanding the

failure of the defendant to file the written statement to the plaint, the defendant is entitled to file written statement to deal with the amended plaint. In

the said case, this Court declined to allow the Defendant No.10 therein to file written statement to the plaint in a commercial suit, as the time had

elapsed. However, the Court permitted Defendant No.10 to file written statement to deal with the amended plaint, observing that once the plaint was

amended, the Defendant certainly deserves an opportunity to deal with the amended portion of the plaint only. The observations in paragraph 6 of the

said order read as under :

Ã¢â¬â€œ6. However, the question now only remains whether Defendant No.10 can be allowed to deal with the portion of the Plaint which has been amended only

pursuant to the order dated 30th August, 2022 and which amended Plaint was served on Defendant No.10 on 15th September, 2022. To my mind, once the Plaint was

amended and amended Plaint was served on Defendant No.10, Defendant No.10 certainly should be given an opportunity to deal with the amended portion of the

Plaint only. This amendment was carried out by the Plaintiff and by virtue of this amendment, the Plaintiff sought to bring on record the statutory notices that were

required to be served on Respondent Nos.3 to 8. These notices have come on record for the first time only by virtue of this amendment. It may be that by allowing

Defendant No.10 to deal with the amended Plaint (and the new Annexures brought on record) there may be an overlap. But merely because there is an overlap cannot

dis-entitle Defendant No.10 from dealing with the amended portion of the Plaint. It is not in dispute that the time to file an additional Written Statement to the

amended portion of the Plaint has not expired as contemplated under Order VIII Rule 1 of the CPC (insofar as it applies to Commercial Suits). This being the case, I am

inclined to grant leave to Defendant No.10 only to the limited extent of filing a Written Statement dealing with the amended portion of the Plaint. In other words,

Defendant No.10 shall be entitled to file a Written Statement dealing only with paragraph 8A of the Plaint and Exhibit-T collectively.

20. In the case of Raman Sharma (supra), a learned Single Judge of the Delhi High Court, after adverting to the aforesaid pronouncement in the case

of Gurdial Singh and Ors. (supra), enunciated that the time frame as provided under Order VIII Rule 1 of the Code would not be applicable to the

written statement filed by the defendant as consequential amendment to amended plaint. The learned Single Judge held that since the pleadings can be

amended at any stage, time frame of 120 days as prescribed for filing of the written statement, becomes inapplicable to the consequential amendment

made to the written statement. This is more so as the defence of the defendant is already on record and it is only to the amendment allowed to the

plaint that the additional response is required.

21. Mr. Dewani laid emphasis on the aforesaid enunciation by the Delhi High Court. Strenuous effort was made by Mr. Dewani to urge that since the

original written statement was tendered along with the application dated 30 March 2019, and the said written statement formed part of record of the

Court, and, there is no time frame for filing additional written statement to the amended plaint, there is no impediment in reading the portions of the

written statement which deal with the averments in the plaint introduced by way of amendment.

22. The aforesaid submission brings to the fore the question, can it be said that the written statement which was tendered along with the application

dated 30 March 2019 formed part of the record of the Court ? On first principles, I am afraid to accede to the submission of Mr. Dewani that the

written statement which was tendered along with the application dated 30 March 2019 formed part of the record of the Court, despite the application

having been rejected by the trial court twice and the said order having been attained finality upto the Supreme Court. Necessary corollary of the

rejection of the application to set aside the written statement order and take the written statement on record was that the written statement so

tendered was not taken on record and never formed part of the record of the Court. Since the right of the defendant to file written statement stood

foreclosed, the said right could not have been revived sans the order of the Court setting aside the said foreclosure.

23. Timeline, as noted above, is also of critical salience. Firstly, even before the application for setting aside no written statement order and to accept

the written statement was filed, the Plaintiff had amended plaint on 31 January 2019. Secondly and incontrovertibly, a copy of the amended plaint was

also received on behalf of the Defendants. Thirdly, and more importantly, written statement which was tendered by the Defendants along with the

said application dated 30 March 2019, was a composite written statement. It deals with the averments in the original plaint as well as the averments

and prayers introduced by way of amendment. Resultantly, what was declined to be taken on record was the written statement to the amended plaint.

24. In the backdrop of these facts, I find substance in the submission of Mr. Naidu that all those orders declining permission to the Defendants to file

written statement cannot be rendered nugatory by acceding to the request of the defendants to now read the portions of the said written statement

(which is not part of the record of the Court), as written statement to the amended plaint.

25. The matter can be looked at from another perspective as well. The instant application came to be filed after dismissal of the SLP by the Supreme

Court. Even if the submission of Mr. Dewani that there is no time frame to file additional written statement to the amended plaint, is taken at par, yet

the fact that a period of five years had elapsed from the amendment in the plaint, cannot be lost sight of. This again underscores the lack of diligence,

bordering on negligence, on the part of the defendants which resulted in foreclosing their right to file written statement to the plaint.

26. The conspectus of aforesaid discussion is that the Defendants cannot be now permitted to urge that the written statement which was tendered

along with the application dated 30 March 2019 formed part of the record and be read even to the limited extent as a consequential pleading to the

amended plaint.

27. Thus, no fault can be found with the impugned order. Resultantly, the Writ Petition deserves to be dismissed.

28. Hence, the following order :

ORDER

1] The Writ Petition stands dismissed.

2] Rule discharged.

3] No costs.