

Ramdas and Another Vs. SMS Infrastructure Limited and Others

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Court : Mumbai Nagpur

Decided On : Aug-02-2016

Judge : Z.A. Haq

Appeal No. : Writ Petition No. 6926 of 2014

Appellant : Ramdas and Another

Respondent : SMS Infrastructure Limited and Others

Judgement :

Oral Judgment:

1. Heard Smt. M.P. Munshi, Advocate for the petitioner-original plaintiffs, Shri A.V. Bhide, Advocate for the respondent No.1-original defendant No.1 and Shri H.R. Dhumale, Assistant Government Pleader for the respondent Nos.2 and 3-original defendant Nos.2 and 3.
2. Rule. Rule made returnable forthwith.
3. The plaintiffs have assailed the order passed by the trial Court rejecting the application (Exhibit No.55) filed by the plaintiffs under Order VI Rule 17 of the Code of Civil Procedure seeking permission to amend the plaint.
4. The application is rejected by the learned trial Judge on the ground that the trial has commenced and the plaintiffs have not been able to show that inspite of due

diligence they could not bring on record the pleadings sought to be brought on record by the proposed amendment. The issues are framed, however, recording of evidence has not yet started. The learned trial Judge has committed an error in relying on the proviso below Rule 17 of Order VI of the Code of Civil Procedure for rejecting the application filed by the plaintiffs.

5. The learned Advocate for the defendant No.1 has submitted that the pleadings sought to be now incorporated had been in the knowledge of the plaintiffs since the filing of the civil suit and there is no explanation for not incorporating the pleadings earlier.

Considering the nature of pleadings and the fact that if the amendment is permitted the nature of claim of the plaintiffs will not change and as the defendants have not been able to point out any legal impediment which disentitles the plaintiffs from seeking the amendment, in my view, the application filed by the plaintiffs is required to be allowed.

6. Hence, the following order :

(i) The impugned order is set aside.

(ii) The application (Exhibit No.55) filed by the plaintiffs is allowed.

Rule is made absolute in the above terms. In the circumstances, the parties to bear their own costs.

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