

Sequeira

*IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION*

WRIT PETITION NO. 9601 OF 2014.

Madanlal Kanahaiyalal Oswal (Gundecha). .. Petitioner
Vs.
Nitin Vasant Redij & ors. .. Respondents

Mr.Madhav Jamdar i/b Mr.S.M.Kazi, for the Petitioner.
None for Respondents.

***CORAM: N.M.Jamdar, J.
Thursday 30 April, 2015***

Oral Order :

By this petition, the Petitioner challenges the order 25 July 2014 passed by the learned District Judge, Ratnagiri, rejecting the application for amendment of Written statement, during the pendency of the Appeal.

2 The suit was filed by the Respondents for eviction of the Petitioner. The suit was decreed by the learned Civil Judge, J.D., Ratnagiri, on 5 May 2012. Thereafter the Petitioner filed Regular Civil Appeal No.124 of 2012 in District Court at Ratnagiri. By an application dated 17 January 2013, the Petitioner sought to amend the Written statement to incorporate certain challenges to the Will dated 20 April 1996. The learned District Judge held that, from the pleadings of the Petitioner it is clear that Petitioner was aware of the Will in question, inspite of that no amendment was carried out in the Suit, and at belated stage the amendment is sought, which

will change nature of the Suit as well as delay the proceedings further, cannot be granted. Accordingly, by the impugned order dated 25 July 2014, the application was rejected.

3 In the application there is no explanation at all as to why the application for amendment could not be moved earlier. The requirement to give reasons for the delay to move amendment to the pleadings at belated stage, is a jurisdictional requirement. The learned Judge was therefore, correct in holding that in absence of any reasons at all the application could not be entertained. The learned counsel for the Petitioner submitted that the Written statement contains an averment that the Will is defective and the amendment is merely clarificatory. If that is the position, it is not necessary to carry out the amendment, if the ground is already taken in the Written statement. Therefore, no prejudice will be caused to the Petitioner, if the amendment is not granted.

4 The Writ petition cannot be entertained and is accordingly rejected.

(N.M.Jamdar, J.)