

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 2681 OF 2015

Yadav Shankar Sahane	..	Petitioner
VS.		
Rangnath Trimbak Shirsath	..	Respondents

AND
WRIT PETITION NO. 2682 OF 2015

Yadav Shankar Sahane	..	Petitioner
VS.		
Rangnath Trimbak Shirsath & Anr.	..	Respondents

Mr. Rahul D. Motkari for Petitioner.
None for Respondents.

CORAM : M. S. SONAK, J.
DATE: 24 APRIL 2015

P.C. :-

- 1] These two Petitions can be disposed of by a common order.
- 2] In Writ Petition no. 2681 of 2015, the petitioner is the defendant in Special Civil Suit No. 520 of 2013 instituted by the respondent – plaintiff. The suit is for specific performance of agreement dated 10 April 2013. In Writ Petition No. 2682 of 2015, the petitioner, is the plaintiff in Special Civil Suit No. 519 of 2013 and the respondents herein, are the defendants. The said suit is for the purposes of setting aside the agreement dated 10 April 2013. In

a sense, therefore, the two suits are cross suits. One suit seeks specific performance of the agreement dated 10 April 2013 and the other seeks setting aside of the agreement dated 10 April 2013.

3] In Special Civil Suit No. 520 of 2013, the respondents, after the issues were framed, applied for amendment to amend the plaint and in Special Civil Suit No. 519 of 2013, the respondents, applied for leave to amend the written statement. The amendment was to the effect that the respondents, in pursuance of the agreement for sale dated 10 April 2013 has paid an amount of Rs.40,000/-, over and above the amount of Rs.12,00,000/-. In the application seeking leave to amend, it was stated that this circumstance with regard to payment of additional amount of Rs.40,000/-, remained to be stated in the plaint / written statement and that such payment is backed by bank documents. By the impugned orders, the amendment to the plaint and to the written statement has been allowed. Hence, the present petitions.

4] The learned counsel for the petitioner submitted that in the notice issued before the litigation by way of the two suits commenced, as also in the plaint and written statement as originally filed, there is no reference to the payment of this additional amount of Rs.40,000/-. Further, the documents, which the respondents seek

to produce as evidence of payment are fabricated. In any case, the learned counsel submitted that the issues have already been framed in the two suits, and the application seeking leave to amend was made belatedly. There was no explanation for the delay. In the circumstances, the learned counsel for the petitioner urged that the impugned orders be interfered with.

5] Having heard the learned counsel for the petitioner in both the petitions, and perused the record, in my judgment, there is no necessity to interfere with the impugned orders. The amendment, merely seeks to bring on record the alleged circumstance that the respondents, in pursuance of agreement dated 10 April 2013 has paid an amount of Rs.12,40,000/- instead of Rs.12,00,000/- stated earlier. The application seeking leave to amend was applied for at the stage when the issues were framed but before the trial could actually commence. There is explanation in so far as the delay in applying for leave to amend is concerned. In fact such explanation was not necessary, since the trial in the suit commences only when the plaintiff or his witnesses file affidavit in lieu of examination-in-chief, which stage is yet to be reached in the two suits. The learned Civil Judge, in the impugned order has observed that the explanation furnished is acceptable. The issue as to whether the bank documents are fabricated or not is not required to be gone into

at the stage when application seeking leave to amend is being considered. Therefore, upon collective consideration of all the aforesaid circumstances, it cannot be said that the impugned orders are vitiated by any error of jurisdiction or perversity of approach. Necessary costs have also been awarded in favour of the petitioner.

6] Accordingly, both the petitions are dismissed. There shall be no order as to costs.

(M. S. SONAK, J.)

Chandka