

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.3519 OF 2015

Fajal Mankiya.] ... Petitioner

Versus

Rusi Kaikhushru Modi and Anr.] ... Respondents

Mr. Vaibhav Gaikwad for Petitioner.

CORAM :- M. S. SONAK, J.

DATE :- APRIL 06, 2015

P. C. :-

1. This petition challenges the Order dated 27/02/2015 by which the Petitioner's application to seek amendment to the Written Statement has been disallowed. As per the law laid down by the Hon'ble Apex Court in the cases of *South Konkan Distilleries and Another V/s. Prabhakar Gajanan Naik and Others*¹ and *Andhra Bank V/s. ABN Amro Bank N. V and Others*², the Courts are expected to be liberal in the matters of amendment to Written Statement and further delay by itself is no ground to decline leave to amend the Written Statement. In the facts and circumstances of the present case, however, no fault can be found with the Order made by the learned Civil Judge in declining leave to amend.

¹ (2008) 14 Supreme Court Cases 632

² (2007) 6 Supreme Court Cases 167

2. The suit in the present case was instituted in the year 2001. The Petitioner-Defendant filed Written Statement on 29/11/2002 and issues were cast on 08/02/2008. The Plaintiffs filed Affidavit in lieu of examination-in-chief on 04/10/2012 and cross-examination was completed on 19/11/2014. Thereafter, one more witness on behalf of the Plaintiffs was examined and such examination was concluded on 07/01/2015. At the stage when, the Petitioner had to commence his evidence, application came to be filed seeking leave to amend the Written Statement on the ground that objection in respect of valuation of the suit property remained to be taken in the Written Statement. The application, contains no reasons whatsoever as to why such objection, was not raised earlier, in case the Petitioner was really serious with such objection. It does appear that the amendment was applied for, in order to protract the matter and to seek some time rather than proceed with the evidence in the matter.

3. Considering the stage at which the suit is placed and also the circumstance that the application for amendment makes out no case whatsoever as to what prevented the Petitioner from raising the objection as to valuation earlier, the learned Civil Judge was right in making the impugned order. The only so called reason stated in the application seeking amendment that the earlier Advocate did not deem appropriate to raise such objection in the Written Statement. Such reason does not inspire any confidence and in any case, the learned Civil Judge was right in not entertaining the application at such highly belated stage.

4. There is no jurisdictional error.
5. Accordingly, the present petition is dismissed. There shall be no order as to costs.

(M. S. SONAK, J.)