

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

WRIT PETITION St. NO.19002 OF 2015

Holaram Shitaldas Chawla

(Since deceased through LRS)

Lajwanti Ghanshyamdas Doulatani and others .. Petitioners

Versus

Chandrakant Laxman Kardak and others .. Respondents

Mr. T. N. Sonawane, for the Petitioners.

CORAM : R.M. SAVANT, J.

DATE : 28th OCTOBER, 2015

PC.

1. At the outset, the Learned Counsel for the Petitioners seeks deletion of the word “not” appearing in clause (c) on page 8 in line 6 and 7 thereof. Leave granted. Amendment to be carried out forthwith.

2. The Writ Jurisdiction of this Court is invoked against the order dated 08.01.2015 passed by the Learned 3rd Joint Civil Judge Senior Division, Nashik, by which order, the application Exh.116 for amendment of the counterclaim came to be rejected. The Petitioner herein is the original Defendant in the suit in question being Special Civil Suit No.56 of 2004. In the said suit, the Petitioner filed the counterclaim and by the said counterclaim the Petitioner claimed the relief that the Defendant to the

counterclaim i.e. the original Plaintiff be restrained from interfering with his possession. It seems that the suit thereafter came to be withdrawn by the Plaintiff. The Petitioner i.e. original Defendant filed an application for amendment of the counterclaim so as to incorporate a prayer that the Defendant to the counterclaim i.e. original Plaintiff be directed to execute the Sale Deed pursuant to the Development Agreement allegedly executed in favour of the Defendants. The Trial Court considered the said application and on two fold grounds namely that the application was filed after a period of 10 years and that the counterclaim originally being filed seeking the relief of injunction could now not be allowed to be converted to a suit for specific performance, rejected the application. The Learned Counsel appearing on behalf of the Petitioners sought to place reliance on the Judgment of the Apex Court reported in **(2007) 6 SCC 167** in the matter of **Andhra Bank Vs. ABN Amro Bank N. V. and Others**, wherein the Apex Court held that delay is no ground to refuse the prayer for amendment. In the instant case as indicated above, the nature of the counterclaim would be changed if the amendment is allowed from one seeking the relief of injunction to one seeking the relief of specific performance, that obviously militates against the well settled principles applicable for consideration of an application for amendment of the pleadings in so far as the suit is concerned. In that view of the matter, no

case for interference in the Writ Jurisdiction of this Court is made out. The Writ Petition is accordingly dismissed.

[R.M. SAVANT, J]