

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

WRIT PETITION NO.7401 OF 2014

Siddheshwar Investment Private Limited .. Petitioner

Versus

Sau. Sumati Vilas Kshirsagar and another .. Respondents

Mr. Samir Kumbhakoni, for the Petitioner.

CORAM : R.M. SAVANT, J.

DATE : 10th SEPTEMBER, 2015

PC.

1. The Writ Jurisdiction of this Court is invoked against the order dated 04.03.2014 passed by the Learned Civil Judge Senior Division, Solapur, by which order the application Exh.91 for amendment of the Written Statement to include the counterclaim came to be rejected. The Petitioner herein is the Defendant No.2 to the suit in question which is originally filed in the year 1998 and bears Regular Civil Suit No.200 of 1998. The suit has been filed for specific performance against the Defendant No.1 i.e. the Respondent No.2 herein. The Petitioner herein was impleaded as a party to the suit on 17.08.2000. The Petitioner thereafter filed his Written Statement on 22.03.2005 which came to be taken on record on 30.11.2007. The issues were framed on 24.07.2009 and thereafter the Plaintiff amended the plaint on 14.06.2013 by virtue of the

application Exh.80 allowed by the Trial Court for amendment. The Defendant No.1 filed his Additional Written Statement on 18.11.2013 however the Defendant No.2 has filed instant application thereafter on 04.12.2013 seeking an amendment in the Written Statement as originally filed so as to include counterclaim. By the counterclaim, the Petitioner i.e. original Defendant No.2 seeks the relief of possession of the flat from the Plaintiff. In the counterclaim, the cause of action for filing the same is shown as on 02.06.1998. The Trial Court on the basis that the Defendant No.2 had knowledge of the said facts when he filed the Written Statement on 22.03.2005, did not deem it appropriate to allow the application for amendment of the Written Statement so as to include counterclaim.

2. In my view, having regard to the fact that the cause of action for filing counterclaim has occurred as long back in the year 1998, merely because the Plaintiff has amended the suit in the year 2013 would not enable the Defendant No.2 to incorporate the counterclaim in the Written Statement which has already been filed in the year 2005. In that view of the matter, no fault can be found with the order passed by the Trial Court rejecting the application for amendment of the Written Statement. The Writ Petition is accordingly dismissed.

[R.M. SAVANT, J]

Certified to be true and correct copy of the original signed order.