

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.11421 OF 2015**

Smt. Asha Devendra Soneji

..Petitioner

Vs

1. Shri Paman Bassamal Soneji

.. Respondents

Mr.Gauri Godse, Advocate for Petitioner.

CORAM : R.G.KETKAR,J.

DATE : 20/11/2015

PC:

1. Not on Board. At the request of Ms. Godse, taken up in production board. Heard Ms.Gauri Godse, learned counsel for the petitioner.

2. By this Petition under Article 227 of the Constitution of India, original plaintiff has challenged the Judgment and order dated 13.7.2015 passed by the learned 3rd Jt. Civil Judge, Sr. Dn., Kalyan, below Exh.110 in Special Civil Suit no.153 of 2002. By that order, the learned trial judge rejected the application made by the petitioner for discarding addition, alternation and amendment in paragraphs 11 and 12 of the Written Statement.

3. Ms. Gauri Godse submitted that in paragraph 7 of the impugned order, the learned trial Judge observed as under:-

“This application is signed by the advocate for the plaintiff. It is not supported with the affidavit of the plaintiff. Furthermore the plaintiff has not produced copy of the Written Statement which was supplied to her. From perusal

of the Written Statement Exh.26, it seems that the corrections are duly signed by the deceased defendant and advocate for the defendants. In the absence of production of the copy supplied to the plaintiff, prima facie it cannot be said that deletion and insertions made in the original Written Statement are not finding place in the copy of the Written Statement supplied to the plaintiff.”

4. Ms. Godse invited my attention to paragraph 4 of the petition wherein it is stated as under:

“The petitioner states that her Advocate showed copy of written statement which was served upon her Advocate, to the Hon'ble Court for perusal. The petitioner thereafter filed an application at Exh.110 thereby praying for initiating necessary enquiry into the case and for discarding of the said addition, alteration and amendments made in the said written statement of the respondents.”

5. On the basis of statements in paragraph 4 extracted herein above, Ms Godse submitted that the findings recorded by the learned trial Judge in paragraph 7 and more particularly extracted herein above, are not correct. She, however, states that by way of abundant caution the petitioner will take out fresh application duly supported with affidavit of the plaintiff and along with that application produce copy of the written statement served upon the plaintiff.

6. In view thereof, on the Motion made by Ms Gauri Godse, Petition is allowed to be withdrawn with liberty as prayed for. If such application is made, the learned trial Judge will decide the same on the basis of material on record and in accordance with

law uninfluenced by the observations made in the impugned order. It is made clear that all contentions of the parties are kept open.

(R.G.KETKAR, J.)