

FARAD CONTINUATION SHEET NO.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD

WRIT PETITION NO.8321 OF 2015

**Swati W/o Dajiguru Ghanwate and another Vs. Mahadeo S/o
Manohar Karad.**

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.	Court's or Judge's orders
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Mr.P.N.Kalani, advocate for the petitioners.
Mr.M.P.Kale, advocate for the Respondent.

CORAM : S.V.GANGAPURWALA, J.
Date : 21.03.2016.

PER COURT :

1. Heard.
2. The application for amendment filed by the defendants, thereby incorporating the prayer of specific performance is allowed. Aggrieved thereby the defendants filed the present petition.
3. Mr.Kalani, learned counsel for petitioner submits that initially when the plaintiff has filed the suit, he had only claimed refund of earnest amount. Now by way of amendment, he is claiming relief of specific performance. The Court could not have allowed the said amendment, that too after closure of evidence of the parties.

4. Learned counsel further submits that the said application is barred by limitation. Learned counsel relies on the judgment of the learned Single Judge of this Court in a case of **“Harinarayan G.Bajaj and another Vs. Vijay Agarwal and others”** reported in **2012 (2) Mh.L.J. 106.**

5. Mr.Kale, learned counsel supports the order.

6. The suit is filed in July 2010. The relief of specific performance is claimed on 27.2.2015. The period of limitation naturally has to be considered. It is for the plaintiff to explain as to why earlier the relief of specific performance was not claimed and only refund of earnest amount was claimed. The trial Court has exercised his discretion of allowing the amendment, however, the same was required to be allowed by rider.

7. Though I am not interfering with the order of the trial Court allowing the amendment application, it is clarified that the said amendment which is allowed is subject to limitation. The said application for amendment will be deemed to have been made as on the date when the application for amendment is filed. It would be open for the defendants to raise all the defences available to them.

8. With this clarification, the Writ Petition is disposed of. No costs.

(S . V . GANGAPURWALA, J .)

Dt.21.03.2016.
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