

**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.11833 OF 2015

ABDUL GAFFAR S/O ABDUL KADAR
VS
KAMLA KAR S/O MUKUNDRAO KHAIRNAR (DIED THROUGH L.RS.)
SMT. VIMALBAI W/O KAMLA KAR KHAIRNAR AND ORS.

...
Shrikrishna B.Solanke, Adv. For petitioner;
Mr.NP Dube, Adv. For Resp.Nos.1(A) and 1(B);
Mr.Anand Bhandari, Adv. For Respondent No.2.
...

CORAM : S.S.SHINDE, J.
DATE : 1st February, 2016

PER COURT :

1) Heard learned Counsel for respective parties.

2) Learned Counsel for petitioner invited attention of this Court to original written statement as also additional written statement and submits that the events, which have been subsequently occurred from 15th January, 2015 till 7th April, 2015 are stated in the additional written statement. Even the evidence of defendant no.1 is yet to commence. In case such additional written statement is accepted by the concerned Court, no prejudice would be caused to original plaintiff, in as much as he will have an opportunity to file reply to the proposed additional written statement as also to cross-examine defendant

No.1.

3) Learned Counsel for the petitioner has placed reliance on the judgment of the Apex court in the matter of Baldev Singh & Ors. Vs. Manohar Singh & Anr. - 2006 AIR (SC) 2832 as also in the matter of Andhra Bank Vs. ABN Amro Bank N.V. And Ors. - 2007 AIR (SC) 2511, and submits that, at any stage of the proceedings of the suit, in the interest of justice and so as to incorporate the relevant events occurred even after filing of the written statement, the proposed amendment in the written statement, by way of additional written statement came to be allowed. Therefore, the application for amendment of written statement, ought to have been allowed by the concerned Court.

4) On the other hand, learned counsel appearing for Respondent Nos.1(A), 1(B) and 2, invited attention of this court to the impugned order, and in particular para 7 thereof and submits that the evidence of the plaintiff is closed on 15.7.2014. Thereafter on 2 dates, defendant No.1 preferred adjournment applications below Exhibits-86 & 87. On

3rd September, 2014, he has filed on record evidence affidavit. Again, on 19th September, 2014 and 30 September, 2014, defendant No.1 has preferred adjournment application. On 14th October, 2014, defendant No. 1 has examined himself below Exh.88. When the matter was posted for recording evidence of deft.no.1, on 15th December, 2014, deft.No.1 has filed affidavit of examination in chief of one Sayyed Masood Ali at Exhibit 93. Then after eight dates of hearing, deft.no.1 has changed the advocate and requested for adjournment on couple of occasions and on 11th June, 2015, he has filed an application praying therein for allowing him for filing additional written statement/amendment in the written statement. Therefore, according to learned Counsel appearing for Respondent Nos.1-A & B/original plaintiffs, the application has been rightly rejected and, therefore, this Court may not entertain this petition.

5) Upon hearing the learned Counsel appearing for the respective parties and upon perusal of the reasons assigned by the Trial Court, this court is of the opinion that the application filed by the present

petitioner, at belated stage, for the reasons recorded in para No.7 of the impugned order, has rightly been rejected by the Trial Court. So far as the averments made in paras A, B and C of the additional written statement is concerned, upon careful perusal of these paras of the additional written statement, factual assertions made in the said paragraphs were available to the petitioner even before filing the written statement. Therefore, it was possible for deft. No.1 to incorporate the said averments in the written statement itself. So far as statements made in para B of the additional written statements are concerned, to the extent of events occurred, as contended by the petitioner, after 15.1.2015 till 7.4.2015, it was possible for the deft.no.1 to show due diligence. However, it appears that on 11th June, 2015, application was filed for amendment of the written statement. Therefore, keeping in view the discussion in the impugned judgment and the ratio laid down in the judgments of the Supreme Court and High court, referred in para 9 thereof, I am unable to persuade myself to grant relief, as prayed by the petitioner. In that view of

the matter, the writ petition stands dismissed.

(S.S.SHINDE)
JUDGE

BDV/