

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 4066 OF 2016

Siddharam Parshuram Takale & Anr.	...Petitioners
<i>Versus</i>	
Advashwar Grurubasyya Hiremath	...Respondent

Mr. P.B. Tajane, for the Petitioners.

Mr. P.P. Kulkarni, i/b Mr. A.S. Kulkarni, for the Respondent.

CORAM : K.K. TATED, J.
DATE : 27th April 2016

ORDER :

1 . By consent of the learned Counsel for parties, taken on board for final hearing.

2 . Heard learned Counsel for parties. This Petition preferred by Defendants under Article 227 of the Constitution of India challenging order dated 8th March 2016 passed by the learned District Judge, Kolhapur below **Exh.24** in Civil Appeal No. 235 of 2015 rejecting the Defendants' Application under Order VI Rule 17 of the Code of Civil Procedure, 1908 for carrying out an amendment in

the Written Statement at Appellate stage.

3 . It is the case of the Defendants that the Appellate Court erred in coming to the conclusion that the Defendants failed to make out any case for carrying out amendment in the Written Statement. He submits that the Defendants filed the Written Statement on 19th March 2013. He submits that at the time of filing the Written Statement, it remained on the part of Defendants to provide all the information to his Advocate. Hence, the Defendants preferred Application below **Exh.24** under Order VI Rule 17 of the Code of Civil Procedure, 1908 for carrying out amendment. He submits that the amendment seeks by the Defendants are procedural in nature. It is not going to affect the interest of the Respondent/Plaintiff. He submits that the Appellate Court erred in coming to the conclusion that in view of proviso to the Order VI Rule 17 of the Code of Civil Procedure, 1908, the Defendants are not entitled to carry out amendment in the Written Statement. He submits that if the impugned order is not set aside irreparable loss and injury will cause to the Defendants. He submits that in the interest of justice, this Hon'ble Court be pleased to set aside the impugned order passed by the Appellate Court and allow the Applicant to carry out the

amendment in the Written Statement.

4. On the other hand, learned Counsel Mr. P.P. Kulkarni appearing on behalf of the Respondent/Plaintiff vehemently opposed the present Writ Petition. He submits that the Defendants filed an application for carrying out amendment in the Written Statement at the Appellate stage. He submits that the application was filed by the Defendants on 15th February 2016, which is three years from the date of filing of the Written Statement. He further submits that the Court below held in paragraphs 9 and 10 of impugned order that the Defendants seeking proposed amendment in the Written Statement in respect of the transactions which were in the knowledge of Defendants at the time of filing of the Written Statement. He submits that bare reading of the Application below **Exh.24** shows that the Defendants filed the said application for delaying the litigation. Hence, there is no substance in the present Writ Petition and the same is required to be dismissed, with costs.

5. I heard both the sides at length.

6. Bare reading of copy of Application below **Exh.24** filed by the Defendants for carrying out the amendment in the Written Statement, Reply filed by the Plaintiff and other documents including

the impugned order passed by the Trial Court on 8th March 2016 shows that the Defendants wanted to bring on record the facts which were available in 2013, when he filed his Written Statement. Hence, that cannot be a ground for allowing the Defendants to carry out amendment in the Written Statement.

7. The Appellate Court considered all these facts in paragraphs 9 and 10 of the impugned order. Considering these facts, I do not find any substance in the present Writ Petition and the same is rejected.

8. It is made clear that the Appellate Court may decide pending Appeal on its merits without influencing the order passed by this Court.

[K.K. TATED, J.]