

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

**WRIT PETITION STAMP NO.1980 OF 2016**

**Smt. Shailaja Bhalchandra Bhagwat** : Petitioner.  
**Versus**  
**Prafulla Dattatraya Phadake and anr.** : Respondents.

**Mr. Suhas M Oak a/w Mr. S A Joshi for the Petitioner.**

**CORAM : R. M. SAVANT, J.**  
**DATE : 08<sup>th</sup> February 2016**

**P.C.**

1           The writ jurisdiction of this Court is invoked against the order dated 08/01/2016 passed by the learned 3<sup>rd</sup> Joint Civil Judge, Senior Division, Thane by which order, the Application (Exhibit 154) for amendment of the written statement so as to delete paragraphs 2 to 9 of the original written statement came to be rejected.

2           The Petitioner is the original Defendant No.1 in the suit in question being Regular Civil Suit No.57 of 2009 filed by the Respondent No.1 herein for the eviction of the Petitioner and her son i.e. the Defendant No.2. In the written statement as originally filed, the Defendant No.1 took a stand that the Defendant No.2 has no right in respect of the premises in question and it is on account of the continued presence of the Defendant No.1, that the Defendant No.2 is residing with her daughter. It seems that the application came to be made by the Defendant No.1 for amendment of the written

statement for incorporating paragraphs 9(a) and 9(b) in her written statement. Vide the said paragraph 9(a), the Defendant No.1 has now stated that whatever difference of opinion and misunderstanding was there between her and the Defendant No.2, they have been resolved and that recently the Defendant No.2 has offered the Defendant No.1 to come back to the suit tenement and having regard to the said offer has shifted her residence to the suit tenement and has resumed occupation thereof. In paragraph 9(b) the document styled as declaration was executed between the parties i.e. the Defendant Nos.1 and 2 on 27/01/2012 which was notarized and it is pursuant to the said document that the Defendant No.1 is now residing in the suit premises with an intention to occupy the same as a tenant. It is thereafter that the instant Application (Exhibit 154) has been filed by the Defendant No.1 for deletion of the paragraphs 2 to 9 of the original written statement as they are inconsistent with paragraph 9(a) which has been incorporated by way of the first amendment.

3           The said Application was replied to on behalf of the Plaintiff and the stand taken by the Plaintiff was that allowing the amendment application would result in admissions which are appearing in paragraphs 2 to 9 being withdrawn.

4           The Trial Court considered the said application and has by the

impugned order dated 08/01/2016 rejected the same. The rejection is principally on the ground that allowing the said amendment application and permitting the Defendant No.1 to delete paragraphs 2 to 9 would result in withdrawal of admissions. The Trial Court has also rejected it on the ground that the deletion is sought on the basis of facts which were all known to the Defendant No.1 and therefore according to the Trial Court the due diligence test has not been satisfied by the said Defendant.

4           In my view, having regard to the reasons mentioned in the impugned order, the rejection of the said Application (Exhibit 154) cannot be found fault with. It is for the Defendant No.1 to lead appropriate evidence in respect of the case that was pleaded earlier in paragraphs 2 to 9 and the case that is subsequently pleaded in paragraphs 9(a) and 9(b). Hence no case for interference in the writ jurisdiction of this Court is made out. The above Writ Petition is accordingly dismissed.

**[R.M.SAVANT, J]**