

**FARAD CONTINUATION SHEET
IN THE HIGH COURT OF JUDICATURE AT BOMBAY.
CIVIL APPELLATE JURISDICTION.**

WRIT PETITION NO. 3367 OF 2016

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. S.C. Wakankar for the Petitioner.

Mr. Vilas Tapkir for the Respondent Nos. 1 to 4.

CORAM : K. K. TATED, J.

DATED : 11/04/2016

PC.:

. Heard learned Counsel for the parties.

2 By this petition under Article 227 of the Constitution of India, the petitioner original defendant challenges the order dated 11.01.2016 passed by learned Ad-Hoc, District Judge-2, Baramati, below Exh.52 in Civil Appeal No. 33 of 2010 rejecting defendant's application under Order 6 Rule 17 of Code of Civil Procedure, 1908 to amend his written statement.

3 The learned Counsel for the defendant submits that in view of subsequent development after filing the Appeal, defendant filed application for carrying out amendment in written statement. He submits that after filing of appeal, they learnt that, the predecessor of plaintiff filed suit against the defendant's father for possession of the suit

premises. Therefore, the defendant filed application for carrying out amendment in written statement. He submits that Courts below failed to consider the fact that this Court (Coram : R. M. Savant, J) by Order dated 07.12.2015 in Writ Petition No. 12028 of 2015 granted liberty to the defendant to prefer appropriate application for carrying out amendment if the defendant substantiate his case for carrying out amendment on the basis of relevant documents. He submits that in the present proceeding, defendant placed on record the copy of property extract to show the previous litigation. Hence, the order passed by the learned Ad-Hoc District Judge-2, rejecting the defendant's application for carrying out the amendment to be set aside and defendant be permitted to carry out appropriate amendment in written statement. He submits that if the application filed by the defendant is not allowed, irreparable loss and injury will be caused to him.

4 On the other hand, the learned Counsel for the Respondent plaintiff vehemently opposed the present Civil Revision Application. He submits that the Appellate Court in paragraph 7 of the impugned order specifically recorded that the defendant filed application for carrying out amendment in written statement when the Appeal was fixed for final arguments. He submits that this itself shows that

defendant on one or other grounds wants to prolong the litigation. Therefore, there is no substance in the present Civil Revision Application and same to be dismissed with costs.

5 I heard both the sides at length and perused the proceeding on record. It is to be noted that in the present proceeding, the suit filed by the plaintiff was decreed directing defendant to handover the possession of the suit premises i.e. C.T.S. No. 1902 and 1903 total area 4.6 sq. mtrs and 104.5 sq. mtrs bearing old ward No.4, Sector No.2, House No. 120 disputed area is 300 sq. ft shop i.e. above 12 X 25 ft situated at Daund, Taluka Daund, District Pune. That suit was decreed by the Trial Court by Judgment and Decree dated 22.02.2010. Thereafter, the defendant preferred Appeal. The same was admitted in 2010. The defendant preferred application for carrying out amendment in the year 2015. That also when the Appeal was kept for final hearing. That cannot be allowed in view of amended provisions of Order 6 Rule 17 of Code of Civil Procedure, 1908.

6 Considering the above mentioned facts and the reasons given by the Trial Court at the time of rejecting the defendant's application under Order 6 Rule 17 of the Code of Civil Procedure, 1908, I do not find any substance in the present Writ Petition.

7 Hence, Writ Petition stands rejected. No order

as to costs.

(K.K.TATED, J.)