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

WRIT PETITION NO. 11166 OF 2016

Madhukar Rajaram Mahadik.

... Petitioner.

V/s.

Bharat Raharan Rajput and Ors.

... Respondents.

Mr. Mamath Athalye for the Petitioner.

CORAM : N.M. Jamdar, J.

28 November, 2016.

Oral Order :-

The Petitioner has challenged the order passed by the Civil Judge, Junior Division, Wai permitting the amendment to the plaint moved by the Respondents – landlord.

2. Heard the learned Counsel for the Petitioner. The learned Counsel for the Petitioner submitted that the Respondents – landlord had not taken the ground of permanent construction by the Petitioner when the suit was filed and the application does not disclose any particulars regarding due diligence and therefore in view

of the law laid down by the Apex Court in the case of *Vidyabai and Ors. v/s. Padmalatha and Anr. (2009) 2 SCC 409*, the impugned order could not have been passed.

3. The order challenged is interlocutory. The Respondents – landlord has given reasons as to why the pleading could not be incorporated earlier. He has stated that the construction which was carried out is in respect of alteration of rooms and creation of toilets and the documentary evidence of these internal changes were not available and therefore, the relief could not be incorporated. The reasons stated cannot be stated to be impossible and the acceptance thereof cannot be stated to be perverse to warrant an interference in the power of superintendence of this Court. Merely because the amendment is carried out does not mean that the contentions of the Petitioner on merits as regard the amendment including that of estoppel are foreclosed. Therefore, since all contentions of the Petitioner on merits of the amendment are open, no interference is required in the impugned order. The Writ Petition is accordingly disposed of.

(N.M. Jamdar, J.)