

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

WRIT PETITION NO. 8476 OF 2014

Kisan Dhondiram Sasane,
R/at Mhasrul, Tal. & Dist. Nashik.

... Petitioner

v/s

Lata w/o Bhika Barde,
R/at Amrutdham, Panchavati, Nashik.

... Respondent

Ms. Leena Patil for the petitioner.

None present for the respondent.

Coram: N.M. Jamdar, J.

Dated: 29 August 2016

ORAL ORDER:

The Petitioner challenges the order passed by the Civil Judge, Junior Division, Nashik, dated 3 May 2014, allowing the amendment sought for by the Respondent/Plaintiff.

2 Heard learned counsel for the Petitioner.

3 By an order dated 8 April 2014 in Writ Petition No.11940 of 2013, the learned Single Judge (R.M.Savant, J.) observed that the Respondent needs to be given a fair opportunity for an amendment of

the plaint as it is a fact that there is an agreement which is notarized and that the Respondent has paid an amount of Rs.1,51,000/-. The learned Judge has further given liberty to the Respondent to apply for an amendment of the plaint. Pursuant to this liberty, the Respondent applied for an amendment which has been granted. In view of the observations made by the learned Single Judge in the earlier order of litigation, I am not inclined to interfere with the impugned order. The observations made by the learned Civil Judge while granting an amendment on the aspect of limitation will be part of the final order and it is open to the Petitioner to challenge these observations in the appellate proceedings. Furthermore, merely because the amendment is granted and specific performance of the agreement dated 30 March 2007 has been sought for, the issue as to whether specific performance needs to be granted is a matter of judicial discretion. While exercising the discretion, the aspect of delay, can always be considered by the learned Civil Judge at the time of hearing of the suit. Therefore, merely because the amendment, the argument of the Petitioner regarding grant of discretionary relief is not foreclosed, which no doubt will be considered on its own merits. In view of this position, the Petitioner is not prejudiced so as to warrant an interference under Article 227 of the Constitution of India.

4 The writ petition is rejected.

(N. M. Jamdar, J.)