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

WRIT PETITION NO. 6714 OF 2013

Smt. Suvarna Dilip Patil.

... Petitioner.

V/s.

Mrs. Nirmala Bama Choudhary & Ors.

... Respondents.

Mr. Mayuresh Modgi for the Petitioner.

Mr. Kishor Patil i/b. Nilesh M. Bhole for Respondents 2 to 4.

CORAM : N.M. Jamdar, J.

10 October, 2016.

Oral Order :-

Heard the learned Counsel for the Petitioner. The Petitioner has challenged the order passed by the learned Civil Judge, Junior Division, Pen dated 26 April 2013 Exhibit 85. By the impugned order the learned Civil Judge has rejected the application taken out by the Petitioner – Defendant Nos. 4 to 6 filed under Order VI, Rule 7 and 17 of the Code of Civil Procedure.

2. The application was filed by the Petitioner who are Defendants, stating that the Defendant Nos.4,5 and 6 are not

educated, they had appointed an Advocate alongwith Defendant Nos. 1 to 3, their brothers and at the instance of Defendant Nos.1 to 3 signed the written statement. It is the case of Defendant Nos.1 to 3 that they had assured the Petitioner that they will get their shares and the Petitioners were misrepresented and fraudulently obtained their signatures. It was the case of the Petitioner that thereupon, they appointed another Advocate and they came to know that statements have been made in the written statement that partition has taken place and therefore, the written statement needs to be amended. The Defendant Nos.1 to 3 opposed the application pointing out that unilaterally the Petitioner has introduced another written statement and the application filed by the Respondents – Defendants for striking out the written statement came to be allowed, which order is not challenged and became final. The learned Civil Judge accordingly rejected the application by the impugned order.

3. The Petitioner wants to introduce in the written statement a factual position that there was no partition of the suit property and the property remains joint family property and the Petitioners are entitled their share. However, the parties had filed a compromise pursis in the very suit and the compromise pursis records that there has been a partition of the suit property and every party has received their share. Therefore, if the Petitioner wants to prove that there has been no partition, she will have to make an

application to the learned Judge to relieve themselves of the compromise pursis. If the learned Judge accepts the case of the Petitioner then the Petitioner will not be bound by the statement made in the compromise pursis that there has been an earlier partition, can then seek amendment of the written statement. However, as long as the compromise pursis stands, it may not be permissible to the Petitioner to take contrary stand to what they have agreed in the compromise pursis.

4. Furthermore, if the Petitioner, who is sister is really been misled by her brother in signing the consent terms and make an application to that effect, the learned Judge will no doubt consider the same and ascertain the factual position. In my opinion therefore, before the case of the Petitioner for permitting her to file separate written statement is considered, it will be appropriate that the Petitioner make an application to the learned Civil Judge in respect of the compromise pursis Exhibit 37, as above. The learned Civil Judge will consider the same on its own merits and pass appropriate order thereupon. Depending upon the outcome of the application of the Petitioner regarding the compromise pursis Exhibit 37, it will be open to the parties to adopt further appropriate remedies. Keeping all contentions of the parties as regard the proposed application of the Petitioner open, the Writ Petition is disposed of.

5. The learned Civil Judge, if it is found necessary that the application made by the Petitioner will require evidence to be led for adjudication, it will be open to the learned Civil Judge to direct the parties to lead evidence accordingly.

(N.M. Jamdar, J.)