

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

**WRIT PETITION NO. 8640 OF 2016  
WITH**

CIVIL APPLICATION NO. 1960 OF 2016 IN W.P.No.8640 OF 2016

Smt. Kamal Sudhakar Sawant

..Petitioner.

Vs

Mr. Sitaram Ramchandra  
Nakhwa and Anr.

.. Respondents

Mr. Abdul R. Shaikh , Advocate for Petitioner.  
Ms. Kavita Shah, Advocate for Respondents.

**CORAM : R.G.KETKAR,J.  
DATE : 26/07/2016**

**PC:**

1. Not on Board. At the request of Mr. Shaikh, taken up for admission. Heard Mr. Abdul R. Shaikh, learned counsel for the petitioner and Ms.Kavita Shah, learned counsel for the respondents at length.
2. By this Petition under Article 227 of the Constitution of India, the petitioner has challenged order dated 8.12.2015 below Exhibit-13 and order dated 28.6.2016 below Exhibit-25 passed by the Appellate Bench of the Small Causes Court in Appeal No.105 of 2013. By order dated 8.12.2015, the Appellate Court partly allowed the application Exhibit-13 and permitted the petitioner to carryout amendment as per Schedule annexed in the Appeal Memo only. In other words, the Appellate Court rejected the

prayer made by the petitioner for amending the written statement as per Schedule annexed. Mr. Shaikh states that he is not pressing the amendment to the written statement. Statement made by Mr. Shaikh is recorded. In paragraph 6 of the order dated 8.12.2015, the Appellate Court rejected the prayer made by the petitioner for adducing additional evidence in view of subsequent development.

3. By order dated 28.6.2016 below Exhibit 25 the Appellate Court directed that application Exhibit 26 will be heard along with main appeal.

4. Mr. Shaikh submitted that by order dated 8.12.2015 the Appellate Court rejected the application for bringing subsequent development on record. He, therefore, submitted that the Appellate Court may be directed to decide the application Exhibit 25 along with main appeal uninfluenced by the order dated 8.12.2015 rejecting the application for adducing additional evidence.

5. As noted earlier, by order dated 8.12.2015, the Appellate Court partly allowed the application Exh.13 and permitted the petitioner to amend Appeal Memo. As far as prayer for amending written statement is concerned, same is not pressed here. As far as further prayer of the petitioner to produce additional evidence on record is concerned, the Appellate Court has rejected that

prayer as is evident from paragraph 6. However, the petitioner has thereafter filed application Exh.25 again for adducing additional evidence in terms of Order 41, rule 27 of C.P.C. By order dated 28.6.2016 the Appellate Court directed that the application be heard along with main Appeal. In view thereof, the Appellate Court will decide application -Exhibit 25 uninfluenced by rejection of earlier prayer made in application Exh.13 in the order dated 8.12.2015. All contentions of the parties in the Appeal as also application for adducing evidence are expressly kept open. Subject to this clarification, no case is made out for invocation of powers under Article 227 of the Constitution of India. Petition fails and the same is dismissed.

6. In view of dismissal of the Petition, Civil Application No. 1960 of 2016 for stay of further proceedings of Appeal No. 105 of 2013 does not survive and the same is disposed of.

(R.G.KETKAR, J.)