

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

WRIT PETITION NO.10456 OF 2015

The New India Assurance Co. Ltd.

.. Petitioner

Versus

M/s. Cementation Co. Ltd. and another

.. Respondents

Mr. V. Y. Sanglikar, for the Petitioner.

Mr. P. S. Dani, Senior Advocate a/w Mr. Ankur Gupta i/by Mr. K. M. Damle, for the Respondent No.2.

CORAM : R.M. SAVANT, J.

DATE : 16th FEBRUARY 2016

PC.

1. The order dated 25.08.2014 passed by the Learned Judge of the Small Causes Court, Mumbai, rejecting the application being MARJI No.135 of 2012 filed by the Petitioner for amendment of the plaint in RAE & R Suit No.933/2999 of 1987 is taken exception to by way of the above Petition.

2. The principal ground on which the said application has been rejected is the ground that the plaint cannot be allowed to be amended, at the said point of time as according to the Trial Court there appears to be no proceeding pending whereby the amendment is warranted.

3. The Learned Counsel appearing on behalf of the Petitioner on instructions states that the Petitioner would not pursue seeking amendment in the original suit, but would file separate proceeding or application for claiming mesne profits and would therefore seek liberty to withdraw MARJI No.135 of 2012. In view of the said statement made by the Learned Counsel, the application MARJI No.135 of 2012 is allowed to be withdrawn. In view thereof, it is not necessary to consider the impugned order on merits. The impugned order would accordingly stand set aside.

4. Needless to state that if any such separate proceeding or application is filed, the same would be decided on its own merits and in accordance with law. It is further made clear that the contentions of the parties on all aspects including the aspect of maintainability and limitation are kept open for being urged before the concerned Court. With the aforesaid directions, the Writ Petition is disposed of.

[R.M. SAVANT, J]