

FARAD CONTINUATION SHEET
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.2397/2015

Office Notes, Office Memoranda of Coram, Appearances, court's orders or directions and Registrar's orders	Court's or Judge's orders
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Mrs. A.R.S.Baxi i/b. S. H. Bohra for the petitioner
Mr. S. D. Rayrikar, AGP for the respondent No.1.
Mr. Nitin Deshpande i/b. Sumen Y. Lengare for respondent No.2.

CORAM : K. K. TATED, J.

DATE : JULY 5, 2016

RC.:

1. Heard. By this petition under Article 227 of the Constitution of India the Petitioner plaintiff challenges the order dated 04.08.2014 passed by the 2nd Jt. Civil Judge, Junior Division Thane, below Exhibit- 33 in Special Civil Suit No. 156/2012 rejecting the application made by the plaintiff to carry out amendment.

2. The learned counsel for the applicant submits that they filed the suit for specific performance of contract. In the plaint, they specifically stated that they paid sum of Rs.5 lacs. She submits that thereafter the plaintiff learnt that in fact they paid more than Rs. 5 lacs. From their

statement of account, they learnt that they paid Rs.10 lacs to the defendant by cheque on different dates i.e. 11.08.2010, 12.08.2010 and 03.09.2010. She submits that immediately after they learnt about this fact, they made an application before the Trial Court for amendment of the plaint. She submits that the trial court rejected the said application on the ground that the trial is started. She submits that the trial court failed to consider the fact that the plaintiff wants to place on record documentary evidence to show that they paid sum of Rs.15 lacs to the defendant and not only Rs.5 lacs as stated by them in the plaint. Hence, the order passed by the trial court is required to be set aside allowing the plaintiff to carry out appropriate amendment in the plaint. She further submits that the plaintiff also filed an application below exhibit 35 under Order XIII Rule 2 of the Code of Civil Procedure, 1908 for production of documents. She submits that the said application is pending before the trial court since 17.07.2014. She submits that in the interest of justice, this Hon'ble Court be pleased to direct the trial court to decide the said application below exhibit 35 as early as possible.

3. On the other hand, the learned counsel for the defendant vehemently opposed the Writ

Petition. He submits that the plaintiff has already filed his affidavit of evidence. He submits that once the trial begins, there is no question of allowing the plaintiff to carry out amendment in the plaint. Hence, there is no substance in the Writ Petition. Same be dismissed with costs.

4. Heard both sides. It is well settled position of law that, once trial begins, there is no question of allowing the parties to amend their pleadings unless extra-ordinary case is made out. In the present proceedings, the plaintiff nowhere stated in the plaint about the sum of Rs.10 lacs paid by them to the defendant.

5. Considering these facts and as the trial has already begun, I do not find any reason to interfere with the well reasoned impugned order rejecting the application made by the plaintiff for carrying out appropriate amendment in the plaint. Hence, following order is passed:

- a. Writ Petition stands rejected.
- b. The trial court is directed to decide the application exhibit 35 dated 17.07.2014 made by the plaintiff under Order XIII Rule 2 of the Code of

Civil Procedure, 1908 as early as possible but in any case within 4 months from today.

c. Parties to act on an authenticated copy of this order.

JUDGE