

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 11323 OF 2014**

Shri Babulal Maganlal Chouhan

..Petitioner.

Vs

Shri Ashok Ramkrushna Malu

.. Respondent

Mr. Sandeep S.Koregave , Advocate for Petitioner.

**CORAM : R.G.KETKAR,J.
DATE : 24/06/2016**

PC:

1. Heard Mr. Sandeep Koregave, learned counsel for the petitioner at length.
2. By this Petition under Article 227 of the Constitution of India, the petitioner has challenged the Judgment and order dated 1.10.2014 passed by the learned 2nd Jt. Civil Judge, Jr. Dn., Kolhapur, below Exhibit 78 in Regular Civil Suit No.275 of 2013. By that order, the learned trial Judge rejected the application made by the petitioner, hereinafter referred to as 'defendant', under Order VI, Rule 17 of C.P.C for amending the written statement. After hearing Mr. Korgave and after perusing the impugned order and in particulars paragraphs 4 and 9 thereof, I do not find that the learned trial Judge has committed any error. By the proposed amendment, the defendant wants to incorporate paragraph 22-A so as to bring on record the compromise that

took place in the year 1970 in R.C.S. No. 889 of 1968. The written statement was filed on 7.8.2013. There is no explanation as to why the proposed amendment was not incorporated in the written statement. The learned trial Judge rejected the application and did not accept the plea of the defendant that the proposed amendment is clarificatory in nature. While rejecting the application, the learned trial Judge also imposed costs of Rs.200/- to be paid by the defendant to the plaintiff.

3. In my opinion, the reason given by the defendant for filing the application is totally frivolous and the learned trial Judge was fully justified in imposing the costs. Hence, no case is made out for invocation of powers under Article 227 of the Constitution of India. Petition fails and the same is dismissed. It is, however, expressly made clear that where a decree is appealed from by the petitioner, any error, defect or irregularity in the impugned order, affecting the decision of the case, may be set forth as a ground of objection in the memorandum of appeal as contemplated by Section 105(1) of C.P.C.

(R.G.KETKAR, J.)