

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.10845 OF 2015

Jahirabai Rasulsab Shaikh

... Petitioner

V/s.

Bhagyalaxmi Subhash Nallulwar

... Respondent

Mr. Shrishail Sakhare for the petitioner
Mr. I. M. Khairdi for the Respondent.

CORAM: K.K. TATED, J.
DATED : MARCH 30, 2016

PC. :

1. Heard the learned counsel for the parties. By this petition under Article 227 of the Constitution of India, the petitioner defendant challenges the order dated 17.07.2015 passed by the appellate court at Solapur rejecting the application filed by the defendant below exhibit 48 in civil appeal No.306/2013 for carrying out amendment in written statement.

2. The learned counsel for the defendant submits that in the appellate court, the defendant made an application under Order XLI Rule 27 of the Code of Civil Procedure, 1908 for placing on record an additional document, which was allowed by the appellate court. He submits that the application filed by the defendant for carrying out amendment in written statement was dismissed by the appellate court only on the ground that those documents and material were in the

knowledge of the defendant at the time of filing original written statement. He submits that the appellate court failed to consider the fact that the Appellant defendant is residing in house No.127 and not 129 as stated by the plaintiff in the plaint as well as the decree passed by the trial court. He submits that in the interest of justice to show the true facts before the appellate court, it is necessary for the defendant to carry out amendment in the written statement. Hence, the order dated 17.07.2014 passed by the appellate court below exhibit 48 in civil appeal No.206/2012 deserves to be set aside and the defendant may be permitted to carry out amendment in the written statement. He submits that if Writ Petition is not allowed, irreparable loss will be caused to the defendant.

3. On the other hand, the learned counsel for the respondent plaintiff vehemently opposed the Writ Petition. He submits that the appellate court, after considering the evidence on record rightly rejected the application filed by the defendant below exhibit 48. Hence, there is no substance in the Writ Petition. Same is liable to be dismissed.

4. Heard both sides at length. It is to be noted that the plaintiff filed Regular Civil Suit No. 579/2008 claiming vacant and peaceful possession of House No.129. The suit was filed by the plaintiff on 05.08.2008. Thereafter immediately the defendant filed written statement. The documents on the basis of which the defendant wants to amend his written statement, were available to the defendants on the date of filing the written statement. The defendant filed

application for amendment of written statement with *mala fide* intention to prolong the litigation because as on today, he is in possession of suit property. These facts were considered by the appellate court at the time of rejecting the application filed by the defendant for amendment. I do not find any reason to interfere with the well reasoned impugned order.

5. Hence, the Writ Petition stands rejected.

(K.K. TATED, J.)