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

WRIT PETITION NO.11477 OF 2013

M/s. Deepak Automobiles, Thr. Partners	.. Petitioner
Vs	
Shri Vaijnath Dattatray Rukari	.. Respondent

Mr. S. C. Wakankar for the Petitioner.
Mr. Prasad Kulkarni for the Respondent.

***CORAM : N.M.Jamdar, J.
Wednesday, 23 November 2016.***

P.C. :

The petitioner has challenged the order passed by the learned Small Causes Court Judge, Pune, dated 23 September 2013 wherein the application for amendment of application under Order 21 Rule 97 filed by the Petitioner - judgment debtor was, rejected.

2. Heard the learned counsel for the parties.

3. Initially in the application under Order 21 Rule 97, the petitioner took a categorical stand that the decree holder had put up its lock in the suit premises without due process and upon realizing the mischief the Petitioner made an application to the police authority who broke to open the lock and put the petitioner in actual physical possession. Thereafter an application for amendment is made to delete the reference of breaking open the

lock by the police authorities and the Petitioner has sought to replace the same by stating that the petitioner broke open the lock and not the the police authorities.

3. Having perused the record, it is clear that the amendment sought is not an innocuous amendment. The application has been filed by the Respondent – decree holder alleging collusion on the part of the judgment debtor and police authorities. If the police authorities have acted in collusion with the judgment debtor to break open the lock and breach the rule of law it would be a serious issue, which the learned Judge will have to inquire into. The learned counsel for the Petitioner submitted that the inquiry would be beyond the pleadings. However, if court process and rule of law is interfered with that it would be the duty of the learned Judge to examine the matter, as the issue would go beyond the mere litigation. Therefore irrespective of the pleading of the parties, the learned Small Causes Judge would decide the factual position as to how the lock came to be opened as to whether it was by the judgment debtor alone or it was with the aid of the police authorities. In these circumstances since this inquiry would be carried out irrespective of the impugned order, no interference is warranted in the Writ jurisdiction. Writ petition is rejected with above observations.

(N.M.Jamdar, J.)