

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO.3490 OF 2016

Surraiya Bai w/o Ali Hasan, Thr. POA holder Taher Ali Asgharbai
-vs-

Anisuddin s/o Zainuulabeddin (Dead), Thr. L.Rs. Saidabano wd/o Anisuddin and ors.

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Shri A. R. Deshpande, Advocate for petitioner.
Shri S. M. Agrawal, Advocate for petitioners.

CORAM : A.S.CHANDURKAR, J.

DATE : AUGUST 04, 2016

The petitioner is aggrieved by the order passed by the appellate Court rejecting the application for amendment moved by the petitioner during pendency of the appeal filed by her. By the said application, the petitioner intended to amend the written statement.

Shri A. R. Deshpande, the learned counsel for the petitioner submitted that in the written statement it had been pleaded that the plaintiff has alternate accommodation and about five shops had been let out to other tenants. He submitted that on the aspect of hardship it had been pleaded that the petitioner was earning her livelihood on the basis of business being done in the shop premises. According to him by way of amendment this stand was sought to be substantiated by giving details of occupants of the five shops and on the ground of hardship. He therefore submitted that the appellate court ought to have allowed the application for amendment. He placed reliance upon the judgment in ***AIR 2009 SC 2544 Sushil Kumar Jain v. Manoj Kumar and anr.***

Shri S. M. Agrawal, the learned counsel for the respondents supported the impugned order. He submitted that the petitioner was interested in delaying the proceedings. In fact no evidence was led by

the petitioner in support of her defence. The pleadings which were sought to be amended were already taken in the written statement and therefore with a view of delay the proceedings, the present application has been moved when the appeal was at the stage of final hearing. He placed reliance upon the judgments of the Honourable Supreme Court in **2009(4) Mh.L.J. 30 Vidyabai and ors. vs. Padmalatha and anr.** and judgment of learned Single Judge in **2014(4) Mh.L.J. 168 Jayashree Subhash Kalbande and anr. vs. Bhaurao Nagorao Derkar and ors.**

Having heard the respective counsel, I do not find that the appellate Court committed any error in refusing to grant the amendment as sought. Exercise of due diligence as required by proviso to Order VI Rule 17 of the Code of Civil Procedure, 1908 is not made in the application for amendment. The pleadings in the written statement that was filed in the year 2005 are now sought to be amplified by moving the amendment application in the year 2016. Moreover, the petitioner did not lead any evidence in support of her defence. In these facts therefore the ratio of the judgment in **Sushilkumar** (supra) cannot be made applicable to the facts of the present case.

Hence the writ petition is dismissed with no order as to costs. However, the proceedings in R.C.A. No.43/10 are expedited. The appeal shall be decided by the end of December 2016.

JUDGE

-: C E R T I F I C A T E :-

“ I certify that this Judgment/order uploaded is a true and correct copy of the original signed Judgment/order.”

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