

Mr. Vinay M. Bhate for Petitioner.
Mr. H.S.S. Murthy i/b. Mr. Abhishek Patil for Respondents No.1 and 2.

P.C. :

Heard Mr. Bhate, learned Counsel for petitioner and Mr. Murthy, learned Counsel for respondents No.1 and 2 at length. Mr. Bhate seeks leave to delete respondent No.3. On the oral application made by Mr. Bhate, leave to delete respondent No.3 is granted. Amendment shall be carried out forthwith. Rule. Mr. Murthy waives service for respondents No.1 and 2. At the request and by consent of the parties, Rule is made returnable forthwith and the Petition is taken up for final hearing.

2. By this Petition under Article 227 of the Constitution of India, petitioner, hereinafter referred to as 'defendant No.1', has challenged the order dated 30.11.2016 passed by the learned Judge, City Civil Court, Mumbai in Suit No.2946 of 2012. By that order, the learned trial Judge held that defendant No.1 cannot be permitted to file additional written statement and discarded additional written statement filed by defendant No.1.

3. In support of this Petition, Mr. Bhate submitted that respondents, hereinafter referred to as 'plaintiffs', have amended the plaint by

substituting prayer (c) by prayer (c-i) and added prayer clause (d). He has invited my attention to the written statement earlier filed by defendant No.1 and the additional written statement filed by the defendant No.1 after amendment to the plaint. He states that defendant No.1 will delete following paragraphs from the additional written statement:

- (i) paragraph 2, beginning with “It is submitted ...” and ending with “2/3rd share of the plaintiffs”;
- (ii) paragraphs 3, 6 and 8.

4. In other words, defendant No.1 will retain -

- (I) paragraphs 1;
- (II) paragraph 2, beginning with words “With reference to ...” and ending with “malafide intention and ulterior motive”; &
- (III) paragraphs 4, 5, 7 and 9 to 11.

5. Mr. Murthy has no objection for adopting this course.

6. In view thereof, by consent, the impugned order stands substituted in the aforesaid terms. The learned trial Judge will take the additional written statement accordingly on record. Learned Counsel for the parties state that no additional evidence will be led by both the parties. Rule is made absolute in the aforesaid terms with no order as to costs.

(R. G. KETKAR, J.)

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