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

WRIT PETITION NO. 2540 OF 2015

Rukshana Fazal Baig

.. Petitioner

Vs.

Kanchan Harshad Bongale & Anr.

.. Respondents

Ms. Varsha Y. Shah i/b Mr. Yatin R. Shah for the Petitioner.

Mr. Devendra S. Rajapurkar for Respondent Nos.1 & 2.

CORAM : SMT. SADHANA. S. JADHAV, J.

DATE : 5th OCTOBER, 2017.

P. C. :

1. Heard.
2. Rule. Rule made returnable forthwith with the consent of the parties. The petitioner herein is the original defendant in Suit No. 3222 of 2011 pending before the City Civil Court, Mumbai. The petitioner being aggrieved by the order dated 18.09.2014 has approached this Court. It is the case of the petitioner that the petitioner has filed Chamber Summons seeking relief of amendment to the written statement. The learned Trial Court has observed correctly that the suit was not for just amendment for deletion of paragraph Nos.4 to 7, 9, 12, 13, 15, 17, 21 and 22 of the original written statement and that the petitioner herein had prayed for substituting the said paragraphs with other issues.
3. Perused the schedule filed along with Chamber Summons. It, prima facie, appears that the application seeking amendment to the written

statement was filed after the plaintiff had filed his affidavit in evidence and the trial was posted for cross-examination of the plaintiff. That, it appears from the contents of the schedule that to allow the amendment would amount to taking a wholly inconsistent stand with the written statement filed before the framing of issues. The petitioner by way of substitution desired to place on record the health condition of her mother and other difficulties faced by the original defendant. The learned City Civil Court has rightly observed that the proposed amendment would amount to changing the defence altogether and it would cause serious prejudice to the plaintiffs. The impugned order dated 18.09.2014 calls for no interference and hence the petition deserves to be dismissed. However, it is made clear that the learned City Civil Court shall not be influenced by the observations made hereinabove as they are restricted to the relief of seeking amendment to the written statement. The contentions of the original defendant are kept open and the defendant shall be permitted to lead evidence as far as the material not contended in the written statement. Rule is discharged.

4. The petition stands dismissed and disposed of accordingly.

[SMT. SADHANA S. JADHAV, J.]