

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**

**CIVIL APPELLATE JURISDICTION**

**WRIT PETITION NO. 11971 OF 2016**

|                     |   |            |
|---------------------|---|------------|
| Shri Kanti Visariya | ] | Petitioner |
| Vs.                 |   |            |
| Manohar Nakhva      | ] | Respondent |

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Ms. Ranjan Rajgor, Advocate for the petitioner.  
Mr. Atul Kshtriya i/b Markand Gandhi & Co. Advocate for the respondent.

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**CORAM : R.G. KETKAR, J.**

**DATE : 23<sup>rd</sup> MARCH, 2017**

**P.C.**

Not on board. At the request of Ms. Rajgor taken up in the production board.

2. Heard Ms. Ranjan Rajgor, learned Counsel for the petitioner and Mr. Atul Kshatriya, learned Counsel for the respondent.

3. By this petition under Article 227 of the Constitution of India, the petitioner hereinafter referred to as 'defendant No.1' has

challenged;

[i] the order dated 12<sup>th</sup> January, 2016 below Exhibit-21.

[ii] the order dated 12<sup>th</sup> January, 2016 below Exhibit-23  
as also

[iii] the order dated 12<sup>th</sup> January, 2016 below Exhibit-24

passed by the learned Civil Judge, Senior Division, Thane in Special Civil suit No. 677 of 2013. By order below Exhibit-21, the learned trial Judge rejected the application made by the defendant for recasting issues. By order below Exhibit-23, the learned trial Judge rejected the application made by the defendant under Order-VII, rule-11 (a) and (b) of the Code of Civil Procedure, 1908 [For short 'C.P.C'] for rejecting the plaint on the ground that the plaint does not disclose cause of action as also the suit is undervalued. By order below Exhibit-24, the learned trial Judge rejected the application made by the defendant seeking permission to file additional written statement.

4. In support of this petition, Ms. Rajgor contended that the learned trial Judge committed error in rejecting the application Exhibit-21 for recasting issues. Defendant filed application Exhibit-24 for seeking permission to file additional written statement.

Learned trial Judge ought to have allowed the application Exhibit-21 and thereafter should have recast the issues. The defendant is seeking permission to file additional written statement on the basis of the issues that are to be recast as per application Exhibit-21. She further submitted that from the averments in the plaint, it is evident that the plaint does not disclose any cause of action as also it is undervalued. The plaint is therefore, liable to be rejected under Order-VII, rules - 11(a) and 11 (b) of the C.P.C.

5. On the other hand, the learned Counsel for the respondent supported the impugned order. He submitted that matter is fixed tomorrow for arguments.

6. I have considered the rival submissions advanced by the learned Counsel for the parties. I have also perused the material on record. While rejecting the application Exhibit-21, learned trial Judge noted that application was made on 2<sup>nd</sup> December, 2014. In spite of specific directions issued on 10<sup>th</sup> October, 2015 and 23<sup>rd</sup> November, 2015, the defendant has failed to comply the direction. Advocate for the defendant was also absent though the matter was repeatedly called out. The learned trial Judge noted that the

plaintiff has instituted the suit for specific performance and if it is found that the plaintiff has undervalued the suit, the Court can order recovery of deficit Court fees by directing the plaintiff to deposit the Court fees. It is, therefore, not necessary to recast issues as sought to be suggested by the defendant. For the reasons recorded in paragraph-3 of the impugned order, I do not find that the learned trial Judge has committed any error while dismissing the application Exhibit 21.

7. As far as order below Exhibit-23 is concerned, learned trial Judge observed that the defendant has not made out a case for rejection of the plaint for want of cause of action under Order-VII, Rule-11(a) of C.P.C. As the plaintiff had instituted the suit for specific performance of agreement dated 21<sup>st</sup> September, 2000, it cannot be said that there is no cause of action. In view thereof, I do not find that the learned trial Judge has committed any error in rejecting application Exhibit-23.

8. As far as order below-Exhibit- 24 is concerned, perusal of the application shows that the defendant has not made out any case for filing additional written statement. Order-VIII, Rule-9 of

C.P.C lays down that no pleading subsequent to the written statement of a defendant other than by way of defence to set-off or counter-claim shall be presented except by the leave of the Court and upon such terms as the Court thinks fit. A perusal of the application Exhibit-24 shows that no case is made out for permitting the defendant to file additional written statement. In fact, the application is bereft of any particulars. Ms. Rajgor invited my attention to paragraph 4 of the impugned order to contend that the learned trial Judge observed that the defendant could have taken recourse to Order-VI, Rule-17 of C.P.C. She submitted that the learned trial Judge ignored the provisions of Order-VIII, rule-9 of the C.P.C to permit to file additional written statement.

9. Ms. Rajgor relied upon a decision of the Madras High Court in the case of **P. Saraswathi Vs. C. Subramaniam, AIR 2014 MAD. 50** in particular paragraph-12 to contend that wide discretion is given to the Court to receive additional written statement under Order-VIII, Rule-9 of C.P.C. In my opinion, said decision is not applicable to the facts of the present case. Question is whether the defendant has made out a case for exercising discretion under Order-VIII, Rule-9 of C.P.C. by the Court.

10. For the reasons already indicated, no case is made out by the defendant for allowing him to file additional written statement. In view thereof, I do not find the trial Judge has committed any error in rejecting the application. Hence, no case is made out for interfering with the impugned orders. The petition fails and the same is dismissed.

11. It is made clear that where a decree is challenged by the petitioner, defect or irregularity in impugned order, affecting the decision of the case, may be set forth as a ground of objection in the memorandum of the proposed proceedings as contended by Section 105 (1) of C.P.C.

**[R.G. KETKAR, J.]**