

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

WRIT PETITION NO. 5776 OF 2017

Smt.Sitabai Dharamraj Dhivare

...Petitioner

Versus

Shri. Ashok Lalchand Jain & Ors.

...Respondents

.....
Mr.Ajit R. Pitale for the Petitioner.

.....
CORAM: Mrs.MRIDULA BHATKAR, J.
DATED: JULY 17, 2017

P.C. :

1. This petition is directed against the order dated 16.02.2017 passed by the learned Civil Judge, Senior Division, Malegaon below Exhibit 52 in Special Civil Suit No. 31 of 2014 wherein the application moved by the respondents/plaintiffs under Order VI Rule 17 of the Code of Civil Procedure for an amendment in the pleadings is allowed.

2. The present petitioner is a defendant in the said Civil Suit. The respondents/plaintiffs filed a Suit for specific performance of the contract and perpetual injunction on the basis of the agreement dated 03.05.2011. In the said plaint, neither a prayer for possession nor an alternate prayer for refunding the amount of consideration

was made and therefore, the issues were settled on 27.07.2015 by the trial Court. Thereafter, by an application dated 08.12.2016, the plaintiffs had sought the amendment in the prayer for possession of the suit property and also sought the alternate prayer for refunding the amount of consideration. The said application was opposed by the petitioner/defendant. However, the trial Court allowed the said application.

3. The learned counsel for the petitioner has submitted that the issues were settled on 27.07.2015 and after exceeding 16 months, the application for amendment of the plaint was preferred by the plaintiffs. He has further submitted that on the same day, the plaintiffs moved the application for leading secondary evidence and the said application was allowed. It shows that the plaintiffs have tendered the evidence. He has further submitted that the order allowing the application for amendment in the plaint is illegal and it is to be set aside.

4. Perused the impugned order, plaint and the proposed amendment. The Suit is for specific performance of the agreement. However, possession was not asked for in the plaint and so also there was no alternate prayer for returning the amount of

consideration and damages. The application under Order VI Rule 17 of the Code of Civil Procedure was preferred by the plaintiffs after settlement of the issues, which is not commencement of the trial of the Suit as per ratio laid down in ***Vidyabai & Ors. Vs. Padmalatha & Anr***, reported in ***2009 STPL 2228 SC***. In order to avoid the multiplicity of the proceedings, the learned Judge has allowed the said application under Order VI Rule 17 of C.P.C.

5. The order passed by the learned trial Judge is neither perverse nor illegal. No interference is required. Writ Petition is dismissed summarily.

(MRIDULA BHATKAR, J.)