IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition NO. 11647 OF 2015

M/s. Ishwar Constructions Pvt. Ltd. ...Petitioner
Versus
Parmar Chambers Premises Co-operative Society Ltd. ...Respondent

....

Mr.K.Y. Mandlik, Advocate for the Petitioner.

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CORAM : R. G. KETKAR, J.

DATE : 10th MARCH, 2017

P.C.

1. Heard Mr.K.Y. Mandlik, learned Counsel for the petitioner, at length.

2. By this Petition under Article 227 of the Constitution of India, the petitioner, hereinafter referred to as the 'plaintiff', has challenged the judgment and order dated 22.09.2014 passed by the learned 11th Joint Civil Judge, Junior Division, Pune below exhibit-48 in Regular Civil Suit No.1000 of 2011. By that order, the learned trial Judge rejected the application made by the plaintiff for correction of the following statement recorded in the cross-examination of P.W.1 on 18.07.2014:

> "It is true that the Plaintiff-company has **no** right to construct on the terrace of floors of Parmar Chambers Premises Co-operative Society Limited." (*emphasis supplied*)

3. In support of this Petition, Mr. Mandlik has taken me through the case of the plaintiff as also evidence of P.W.1. He submitted that basically, the consistent case of the plaintiff is its right to construct on the terrace of floors of Parmar Chambers Premises Co-operative Society Limited. However, in the cross-examination dated 18.7.2014 of P.W.1, it was recorded that plaintiff has no right to construct on the terrace of floors of Parmar Chambers Premises Co-operative Society Limited. He submitted that the word "no" in that statement is wrongly recorded, and therefore, plaintiff filed application for correcting the said mistake. By the impugned order, the learned trial Judge has rejected the application on the ground that by carrying out correction, it will amount to allowing P.W.1 to withdraw admission given during the cross-examination.

4. By order dated 5.1.2017, notice was issued to the respondent. Office remark shows that the respondent is duly served. Despite service, none appears on behalf of the respondent. After perusing the material on record, I find merit

in the submission of Mr. Mandlik that basically the consistent case of the plaintiff is its right to construct on the terrace of floors of the respondent. However in the cross-examination dated 18.7.2014 of PW-1, it was recorded that the plaintiff has no right to construct on the terrace of floors of the respondent Society and the word “no” is wrongly recorded. In my opinion, the learned trial Judge committed error in rejecting the application for correction on the ground that it will amount to permitting PW-1 to withdraw the admission during the cross-examination. In fact that was a typographical error if compared with the consistent case of the plaintiff. Hence, Petition succeeds. Impugned order is set aside and application Exhibit-48 filed by the petitioner stands allowed. The learned trial Judge will carry out the necessary correction accordingly. All parties, including the trial Court, to act upon the authenticated copy of this order.

(R. G. KETKAR, J.)

Deshmane (PS)