

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.11499 OF 2016

Zubin Phiroze Noble and others ... Petitioners
Vs.
Subhash Dhanraj Sankla ... Respondent

Mr. Vaibhav Sugdare a/w. Ms Soura Subha Ghosh and Mr. T. Kamat i/b. M/s.
Hariani and Co. for Petitioners.
Mr. R. D. Soni i/b. Ram & Co. for Respondent.

CORAM : R. G. KETKAR, J.
DATE : JANUARY 23, 2017

P.C. :

Heard Mr. Sugdare, learned Counsel for petitioners and Mr. Soni,
learned Counsel for respondent at length.

2. By this Petition under Article 227 of the Constitution of India, petitioners have challenged the judgment and order dated 22.07.2016 below exhibits-184 and 186 as also the judgment and order dated 16.12.2016 below exhibit-207 passed by the learned 9th Joint Civil Judge, Senior Division, Pune in Special Civil Suit No.2025 of 2008. By order dated 22.07.2016, the learned trial Judge permitted petitioners to file written statement subject to the following conditions:

“(a) They may file written statement with pleading of semblance of their title in the suit property and the pleadings connected thereto.

(b) Defendants are not allowed to take plea of incapability of original defendant to enter into contract. They are not allowed to question the agreement itself. As far as the agreement is concerned, they have to stick up with the plea taken by original defendant (Exh.23).

(c) The defendant shall strike out the pleading in the written statement (which is not yet accepted) which is not allowed by the court and thereafter only written statement will be read and recorded.”

3. By order dated 16.12.2016, the learned trial Judge allowed the application filed by the plaintiff and directed defendants to strike out portion in paragraphs 7 and 8, which are quoted in paragraphs 7 and 8 of the order being in contravention of order dated 22.07.2016.

4. After arguing the Petition for quite some time, Mr. Sugdare, upon taking instructions, seeks permission to withdraw this Petition. He submits that liberty may be reserved to the petitioners to challenge the impugned orders in the event the Suit is decided against them.

5. In view thereof, on the motion made by Mr. Sugdare, Petition is allowed to be withdrawn with liberty as prayed for. The trial Court shall accept the written statement in accordance with the order dated 16.12.2016. It is made clear that where a decree is challenged by the petitioner, any error, defect or irregularity in the impugned order, affecting the decision of the case, may be set forth as a ground of objection in the proposed proceedings as contemplated by Section 105(1) of C.P.C.

6. Order accordingly.

(R. G. KETKAR, J.)

Minal Parab