

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**BENCH AT AURANGABAD****WRIT PETITION NO. 3425 OF 2018**

Fasiuddin Fazluddin Shaikh

..

Petitioner

Versus

Syed Rafat Mohiuddin Syed

Gous Mohiuddin and others

..

Respondents

Shri. L. D. Vakil, Advocate for Petitioner.

Shri. Mustaba Gulam Mustafa, Advocate for the Respondent No. 1.

CORAM : S.V. GANGAPURWALA, J.**DATED : 21st September, 2018****PER COURT:**

. Mr. Vakil, the learned counsel submits that the application for the amendment has been rejected in a casual manner. After the plaintiff was cross-examined the facts came to the knowledge from the pleadings of sale deed in the written statement. The petitioner was making it more elaborate only by amendment. According to the learned counsel the basis for amendment exists in the written statement. Only because evidence of plaintiff is over, the court has rejected the application. According to the learned counsel the court has not considered application on its own merits

in a correct perspective.

2. Mr. Mustafa, the learned counsel for the respondent No. 1 submits that the defendants are prolonging the matter and the application for amendment is also a part of the same process. The court has dealt in detail how the defendants have prosecuted the suit. The defendants are not diligent. No explanation is given of due diligence in not giving application before start of evidence. Proviso to Order 6 Rule 17 of the Code of Civil Procedure would squarely apply. The learned counsel submits that on similar lines application for amendment was made by defendants. The same was rejected. The writ petition filed by those defendants bearing Writ Petition No. 9662/2013 is dismissed by the learned Single Judge of this Court under order dated 05.12.2016 and thereafter this defendant has filed the application.

3. I have considered the submissions.

4. In paragraph 8 of the amendment application the defendant states that the proposed amendment is for giving further details and explanation to pleadings in the written statement. The application for amendment states that the details of source of title of the Kacharu and Tulshiram were revealed recently when the defendants found the old

copies. The said explanation is as vague as it could be. No details are given of the dates when the copies are found.

5. It is stated that these defendants have cross-examined the plaintiff in the year 2011.

6. If petitioner has the copies of the documents of court proceedings i.e. decree in arbitration suit, the certified copies of the same are admissible evidence. For that amendment is not required. As far as other documents are concerned, the petitioner is at liberty to produce the same on record by filing an application for production of documents and the court can consider the said application after hearing the respective parties.

7. Considering the aforesaid aspects, I am not inclined to exercise my writ jurisdiction. Writ petition as such is dismissed. No costs.

[S. V. GANGAPURWALA, J.]