

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

30 WRIT PETITION NO. 7280 OF 2015
WITH CA/10314/2017 IN WP/7280/2015

ISHRATJANHA SAYYAD @ ISHRATJANHA LAL MOHAMMAD
TAMBOLI
VERSUS
SHAUKATJAHAN W/O BADSHAH ATTAR AND OTHERS

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Advocate for Petitioner : Mr. S. A. Wakure
Advocate for Respondent Nos. 2-D and 2-E : Mr. Pratap G. Rodge
Advocate for Respondent Nos. 2-A, 2-B, 3-A, 3-B, 3-E, 5 and 6 :
Mr. Swapnil Deshmukh
Advocate for Respondent No. 3-D : Mr. V. S. Tanwade

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CORAM : V. K. JADHAV, J.
DATED : 12th FEBRUARY, 2018

PER COURT:-

1. Learned counsel for the petitioner submits that the petitioner-original defendant no.1, though filed an Application seeking amendment in the pleadings, before that, by order dated 11th February, 2015, the trial Court has passed 'evidence closed' order against the petitioner-defendant no.1. The learned counsel submits that so far as the Application Exhibit 173 seeking amendment in the written statement filed by the petitioner-defendant no.1 is concerned, the trial Court has rejected the

same by the impugned order dated 2nd May, 2015. Aggrieved by the same, the petitioner has preferred the present Writ Petition wherein, this Court has stayed the further proceedings in the Suit. The learned counsel submits that in view of the same, the petitioner-defendant no.1 could not file an Application in the pending Suit for setting aside the order of 'evidence closed' dated 11th February, 2015. The learned counsel submits that there is a basic pleading about the *Hibbanama* and by way of proposed amendment, the petitioner wanted to bring to the notice of the Court a subsequent event as to how the petitioner-defendant no.1 has lost the said document. The learned counsel submits that the petitioner will file an application for setting aside the 'evidence closed' order dated 11th February, 2015 and in case if that application is allowed, then, the petitioner-defendant no.1 may file an application for permission to lead secondary evidence on the basis of the xerox copy of the *Hibbanama*.

2. The learned counsel thus, on instructions, submits that the petitioner seeks leave to withdraw this Writ Petition with liberty to file an Application before the trial Court for setting aside the order of 'evidence closed' dated 11th February, 2015 and in the

event if the said Application is allowed, to file an Application seeking permission to lead secondary evidence in respect of the *Hibbanama*. The counsel appearing for the respective respondents have strongly opposed the aforesaid submissions.

3. It appears that there is a basic pleading about the *Hibbanama* in the written statement filed by the petitioner-defendant no.1. By withdrawing this Writ Petition, the petitioner now accepts the Court's order about the rejection of the Application seeking amendment in the pleadings. However, the petitioner-defendant no.1 is certainly at liberty to file an Application for setting aside the order of 'evidence closed' as passed by the trial Court on 11th February, 2015 and in case, if the said Application is allowed, the petitioner-defendant no.1 would be at liberty to file an Application seeking permission to lead secondary evidence, in case if the petitioner satisfies the trial Court about the requirement of Sections 65 and 66 of the Indian Evidence Act, 1872.

4. In view of the above, leave granted. Writ Petition is disposed of as withdrawn. The petitioner-defendant no.1 is at

liberty to file an Application for setting aside the order of 'evidence closed' dated 11th February, 2015 passed by the trial Court and in case if the said Application is allowed, the petitioner would be at liberty to file an Application seeking permission to lead secondary evidence in respect of the document *Hibbanama*. If the petitioner-defendant no.1 exercises these options of filing Applications for which liberty is granted, it is for the trial Court to decide those Applications on their own merits. The Writ Petition is accordingly disposed of. The pending Civil Application is also disposed of.

(V. K. JADHAV, J.)

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