

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 11405 OF 2017

SHAFIYA BEGUM SHAHANAWAZ QURESHI
VERSUS
MANISHA RAVINDRA MODI AND ANOTHER

...

Advocate for the Petitioner : Shri Maniyar Irfan D.
Advocate for the Respondents : Shri Nimbalkar Aniruddha A.

...

CORAM: RAVINDRA V. GHUGE, J.

DATE :- 26th November, 2018

Per Court:

1 The Petitioner/ original Defendant is aggrieved by the order dated 27.07.2017 by which, her application Exhibit 47 seeking amendment to her written statement filed in RCS No.77/2012 (old No.72/2010), has been rejected.

2 I have considered the strenuous submissions of the learned Advocates for the respective sides.

3 The learned Advocate for the Respondents/ original Plaintiffs has vehemently opposed this petition and prays that this petition be dismissed with heavy costs and the costs, as may be imposed, can be donated for the treatment of poor patients to the Government Hospital, Aurangabad.

4 I have gone through the application Exhibit 47 filed by the Petitioner seeking amendment to the Written Statement under Order Order 6 Rule 17 of the Code of Civil Procedure. It requires no debate that an amendment to the written statement has to be considered more liberally than the manner in which an application seeking an amendment to the plaint could be considered. It also does not require any debate that the defendant can take contradictory stands in the written statement.

5 Notwithstanding the above, I find that the Petitioner has taken a stand that certain revenue records were received by her in 2015, which is after more than 04 years of the lodging of the suit and filing of her written statement. The said documents pertain to an earlier Civil Suit No.14/2010 which, according to the Petitioner, would impact the result of the pending suit. After receiving those documents from the earlier suit, the proposed amendment is set out below clauses IV, V, VI and VII under Exhibit 47. However, certain statements made by the Petitioner/ Defendant in her written statement are being sought to be deleted under clauses I to VII in Exhibit 47.

6 The learned Advocate for the Respondents/ Plaintiffs vehemently submits that certain sentences in the written statement, which are practically admissions, cannot be deleted. If the Petitioner/ Defendant is permitted to delete such sentences, it would change the entire stand taken in the written statement and coupled with the same, a different

stand is being proposed by the paragraphs sought to be added under clauses IV to VII.

7 He further submits that in the above backdrop, permitting the Petitioner/ Defendant to delete vital statements would cause an irreparable harm to the plaintiffs. If a contrary stand is to be proposed or introduced through the amendment, the plaintiffs would always have the right to cause an addition to the plaint so as to controvert the amended portion in the written statement. However, permitting the deletion of vital and decisive statements in the written statement, would cause injustice to the plaintiff.

8 I have considered the impugned order, which the Trial Court has passed in details. The above factors have been considered though the Trial Court has rejected Exhibit 47 also on the ground that the Plaintiffs have filed an affidavit in lieu of examination-in-chief and the trial has commenced.

9 Considering the above and the law laid down by the Honourable Supreme Court in the matter of ***Usha Balasaheb Swami and others vs. Kiran Appaso Swami and others, AIR 2007 SC 1663***, this petition is partly allowed. The impugned order passed by the Trial Court dated 27.07.2017 is modified. Exhibit 47 is allowed only to the extent of permitting the Petitioner to introduce the proposed paragraphs, which are by way of additions to the existing written statement. The impugned order

refusing leave to the Petitioner to delete various statements in different paragraphs is sustained. The Petitioner shall add only the proposed additions to the written statement and shall carry out the amendment and would tender a freshly typed copy of the written statement post such addition, on or before 14.12.2018.

10 Since this Court had directed the Trial Court to adjourn the suit and as the Petitioner had approached the Trial Court with an amendment, belatedly, the Petitioner shall deposit costs of Rs.1000/- (Rupees One Thousand) as donation for the Ghati Hospital, Aurangabad (Government Medical College and Hospital, Aurangabad), to be deposited with the Medical Officer, High Court Dispensary, Aurangabad, either in cash or by Demand Draft, to be drawn in the name of "Dean, Government Medical College and Hospital Dengi Samiti, Aurangabad" on or before 10.12.2018 and produce a receipt of such deposit before the Trial Court at the time of carrying out the amendment.

11 Needless to state, the Plaintiff would be at liberty to pray to the Trial Court for leave to amend its plaint for controverting the amended portion of the written statement.