

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 13778 OF 2017

PARWATIBAI MAROTIRAO JADITKAR
VERSUS
JAGDISH RAJBAHADUR KHONDE

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Advocate for Petitioner : Mr. Biradar Chandrant D.
Advocate for Respondents : Mr. E.G. Irale

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CORAM : V. K. JADHAV, J.
DATED : 24th FEBRUARY, 2018

PER COURT:-

1. By consent of the parties, heard finally at admission stage.
2. By way of this writ petition, the petitioner-original defendant has challenged the order dated 30.10.2017 passed by the Civil Judge, Senior Division, Udgir below Exh.28 in Special Civil Suit No. 25 of 2016.
3. Brief facts giving rise to the present writ petition are as follows:-

The respondent-original plaintiff has instituted a suit for specific performance of contract and also for decree of perpetual injunction. The petitioner-defendant has strongly resisted the said suit by filing written statement. During pendency of the suit, the petitioner-

defendant has filed an application Exh.28 seeking amendment in written statement. The trial court has rejected the said application by the impugned order. Hence, this writ petition.

4. Learned counsel for the petitioner submits that though the petitioner has denied execution of agreement of sale and in view of that entire transaction in the original written statement, further filed an application seeking amendment in the written statement on the ground that written statement was prepared by his advocate without taking any specific instructions from the petitioner-defendant. Learned counsel submits that the petitioner-defendant has sent a notice to the respondent-plaintiff by RPAD through advocate on 23.05.2016 and thereby cancelled the transaction of agreement of sale and in view of the same, the petitioner-defendant seeks to incorporate the same by way amendment in the written statement. The learned counsel submits that the aforesaid amendment is necessary for just disposal of the suit and as such, the trial court should have allowed the application Exh.28.

5. The learned counsel for the respondent-plaintiff submits that the suit was instituted on 20.06.2016 and the petitioner-defendant has filed written statement in the year 2016 itself. If at all the petitioner has given notice to the respondent-plaintiff about

cancellation of agreement of sale on the count that entire consideration has not been paid within time, as agreed, the petitioner could have mentioned the same in the original written statement filed in the year 2016 itself. It is not the case of the petitioner-defendant that after filing of the written statement, the aforesaid legal notice has been issued to the respondent-plaintiff for cancellation of agreement of sale. Learned counsel submits that the petitioner has denied entire transaction in his original written statement and as rightly observed by the trial court, has taken U-turn and is seeking amendment in the written statement to the effect that the said agreement of sale, though executed, came to be cancelled subsequently for want of payment of entire consideration amount. There is no substance in the writ petition. The writ petition is thus liable to be dismissed.

6. On careful perusal of application Exh.28, it appears that the petitioner has specifically contended that his advocate has filed incorrect written statement without taking specific instructions from him. However, it further appears from the contents of application Exh.28 that the petitioner has almost changed his earlier version accepting the transaction of sale and further put up a theory about cancellation of said agreement. Even though the petitioner has put-forth the theory of cancellation of agreement of sale by way of

proposed amendment, it is to be noted here that the petitioner has not filed any counter claim. It further appears that the said notice of cancellation of agreement of sale has been issued on 23.05.2016 i.e. prior to the institution of the suit. There was no reason for the petitioner to suppress this fact in his written statement and subsequently by way of proposed amendment to incorporate all these new facts in his written statement. Learned Judge of the trial court has rightly observed that the petitioner was not diligent in defending the suit and as such, his application seeking amendment in the written statement, introducing a new story in the written statement, is not permissible.

7. In view of above, I do not find any substance in this writ petition. The learned Judge of the trial court has rightly rejected the application. The writ petition is hereby dismissed. No costs.

(V. K. JADHAV, J.)

rlj/