

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.468 OF 2016

Sandip Ghatge & Anr.	.. Petitioners
Vs.	
Vishnupant G. Chavan	.. Respondent

Mr.Yuvraj Narvankar for the petitioners.
Mr.Chetan Patil for the respondent.

CORAM : R.D. DHANUKA, J.
DATE : 5th September 2018

P.C.:

. By this petition filed under Article 227 of the Constitution of India, the petitioners have impugned the order dated 4th December 2015 passed by the 2nd Joint Civil Judge, Senior Division, Kolhapur below Exhibit 55 thereby rejecting the application filed by the petitioners (original plaintiffs) under Order VI Rule 7 of the Code of Civil Procedure, 1908 (for short “the said Code”) inter alia praying for amendment to the plaint and to include a prayer for refund of the amount allegedly paid under the Agreement for Sale in respect of which the suit was filed for specific performance thereof. The suit was filed in the year 2012 seeking specific performance of the suit agreement. It is not in dispute that the petitioners have already entered the witness box and their evidence is concluded prior to the date of making of an application under Order VI Rule 7 of the said Code i.e.18th September 2015. The learned trial Judge has accordingly rejected the said application by an order dated 4th December 2015.

2. Mr.Narvankar, learned counsel for the petitioners submits that inadvertently the prayer for refund of the amount paid by the petitioners was not included in the alternative to the prayer for specific performance filed by the his clients.

3. Learned counsel submits that the petitioners is entitled to seek alternative relief and thus if the impugned order dated 4th December 2015 passed by the learned trial Judge is not set aside, serious prejudice would be caused to the petitioners.

4. Mr.Patil, learned counsel for the respondent (original defendant), on the other hand, submits that admittedly in the original plaint, the petitioners did not seek any prayer for refund of the amount paid by the petitioners. The said suit was filed on 19th April 2012. The petitioners had already entered the witness box and their evidence is concluded. He invited my attention to paragraph 11 of the order dated 4th December 2015 passed by the learned trial Judge. Learned trial Judge has rightly observed that the purpose of seeking amendment at this stage is to wash out the effect of the cross-examination of the plaintiffs before the learned trial Judge in the said suit.

5. During the course of the arguments of this writ petition, issue of limitation arose i.e. as to whether the application for seeking amendment i.e. on 18th September 2015 inter alia praying for refund of the amount allegedly paid by the petitioners would be barred by law of limitation or not in view of the admitted position that the suit for specific performance itself was filed on 19th April 2012. Learned counsel for the petitioners could not satisfy this Court as to how the claim for

refund of the amount which was sought to be included in the application dated 18th September 2015 would be within a period of limitation. Be that as it may, the evidence of the plaintiffs is already concluded and thus the application for amendment of the plaint at this stage even otherwise could not have been entertained by the learned trial Judge. I do not find any infirmity in the impugned order dated 4th December 2015. The petition is devoid of merit and is accordingly dismissed. No order as to costs.

R.D. DHANUKA, J.