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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION (STAMP) NO.467 OF 2018
IN
WRIT PETITION NO.8033 OF 2012

Arvind N. Mistry ...Applicant

IN THE MATTER BETWEEN :

Arvind N. Mistry ...Petitioner

V/s.

New Shiv Darshan Co-op. Hsg. Soc. Ltd. & Ors. ...Respondents

Mr.Ajai Fernandes with Mr.Mohan G. S. i/b MGS Legal for the
Applicant / Petitioner.

Mr.Shailesh Shah, Senior Counsel i/b Mr.Hasanuddin S.Ansari for
the Respondent Nos.1 and 3.

CORAM : R.D. DHANUKA, J.
DATE : 10TH JANUARY, 2018.

P.C. :-

1. Not on board, taken on board by consent of parties and is heard.
2. By this civil application, the applicant seeks amendment to the Writ Petition No.8033 of 2012 so as to raise additional grounds of challenge in the writ petition and to seek additional reliefs in the writ petition. The applicant also seeks to place on record various subsequent events on record by seeking amendment to the writ

petition by this civil application.

3. The civil application is vehemently opposed by the respondent nos.1 and 3 on various grounds.

4. Learned counsel for the applicant submits that there are subsequent events transpired during the pendency of the writ petition which are required to be placed on record. It is further submitted that the erstwhile advocate who was representing the applicant did not raise some of the grounds which are noticed by the new advocate on record after perusing the documents made available to them. It is submitted that since the petition is still pending before this Court, no prejudice of any nature would be caused to the respondents if the amendment as sought in the civil application is permitted by this Court.

5. Mr. Shah, learned senior counsel appearing on behalf of the respondent nos.1 and 3 on the other hand opposed this civil application on the ground that the writ petition was already filed by the petitioner as far back as on 14th August, 2012. He submits that it is not the case of the applicant that the documents which are now considered by the new advocate were not available with the applicant when the writ petition was filed. He submits that the only additional fact which is sought to be placed on record by the applicant in this civil application is alleged event of engaging of the new advocate by

the applicant and seeking cancellation of the mutation entry dated 7th September, 2013. He submits that the applicant has obtained an *ex-parte ad-interim* order against the respondent no.1 society and has now filed this civil application belatedly for seeking amendment to the petition with a view to further delay the hearing of the writ petition filed by the applicant.

6. It is not in dispute that the writ petition was filed on 14th August, 2012 *inter-alia* impugning the order passed by the respondent no.4 granting an order of deemed conveyance in favour of the respondent no.1. The matter appeared on board on 16th July, 2013 and even prior thereto. The matter was argued by the applicant before this Court on 16th July, 2013 and even thereafter on 15th July, 2014 when this Court granted ad-interim relief in favour of the applicant in absence of the respondent nos.1 to 3. The matter thereafter appeared before this court when the applicant did not apply for time to file any civil application for seeking amendment to the writ petition.

7. A perusal of the averments made in the civil application clearly indicates that the applicant was fully aware of the documents available with the applicant when the writ petition came to be filed. The applicant has not made out any case for seeking amendment to the writ petition after more than four years of filing of the writ petition.

8. The subsequent events which are sought to be placed on record were argued before this Court across the bar, which can be considered by this Court without granting any prayer for amendment in the writ petition. In my view, the application for seeking amendment to the writ petition belatedly at this stage when the matter was adjourned from time to time and the applicant had appeared and did not make any application for seeking permission to amend the writ petition, thus cannot be allowed by this Court. No case is made out for grant of amendment as prayed in the civil application.

9. The civil application is accordingly dismissed. No order as to costs.

(R.D. DHANUKA, J.)