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

WRIT PETITION NO.1427 OF 2018

Satish M. Pardeshi	...	Petitioner
V/s.		
Deepak Mevalal Pardeshi		
and anr	...	Respondents

Mr. Roshan S. Tanna, for the Petitioner.
Mr. P.R. Arjunwadkar, for the Respondents.

CORAM : DR.SHALINI PHANSALKAR-JOSHI, J.

DATE : 18th APRIL, 2018.

P.C. :

1] Heard learned counsel for the petitioner and learned counsel for the respondents.

2] By this petition filed under Article 227 of the Constitution of India, the petitioner is challenging the order dated 13th January, 2018, passed below Exh.149 in R.C.S.No.125 of 2008, by 2nd Joint Civil Judge Senior Division, Thane.

3] Application at Exh.149 was filed by the present petitioner, who is defendant before the trial Court, seeking amendment in the written statement under Order VI Rule 17 of Code of Civil Procedure. It was submitted that the present suit was filed by the respondent

Deepak Mevalal Pardeshi, who is brother of the present petitioner against Maharashtra State Electricity Distribution Co. Ltd., restraining it from transferring the electric meter standing in his name, to the name of any other person.

4] It was specifically averred in the plaint that the present petitioner is younger brother of the respondent No.1-plaintiff. The shop is divided into two parts each admeasuring about 8 x 12 feet. The respondent No.1 was running flour mill in half portion and the other half portion has been given on rental basis by the present petitioner and his mother Hirabai. Both shops are having different entrances. It was also stated that "no objection", required for carrying out the business of flour mill was obtained by the respondent No.1, in the name of his mother. However, she never carried on the business. Now at the instance of present petitioner, attempts are made to transfer electric meter standing in the name of respondent No.1, in the name of other person.

5] It needs to be stated that the present petitioner and his mother had filed application under Order I, Rule 10 of the Code of Civil Procedure, for adding their names as defendants in the suit. In paragraph No.1 of the said application it was stated that the present petitioner is absolute owner in respect of shop premises and respondent No.1 was conducting business of flour mill therein

illegally. In view of the order passed on the said application, petitioner and his mother were impleaded in the suit as defendant Nos. 2 and 3.

6] Thereafter both of them, filed written statement in the trial Court on 22.12.2012. In the written statement in paragraph No.2, it was stated that defendant No.2 Hirabai, was the absolute owner of the suit premises. She has paid consideration amount and after getting possession, regularly paid the taxes of the suit premises.

7] Now by way of proposed amendment, the petitioner wants to stake claim that he is the absolute owner of the shop premises. To substantiate his submission, learned counsel for the petitioner has pointed out to the averments made in the application filed under Order 1 Rule 10 of Code of Civil Procedure; wherein it was stated that the applicant No.2, namely, present petitioner is absolute owner in respect of shop premises. According to learned counsel for petitioner, it was clearly a typographical error that in the written statement, it was mentioned that defendant No.2 their mother is the absolute owner and the petitioner wanted to correct it by way of amendment in the written statement.

8] However, the perusal of the impugned order, passed by the trial Court goes to show that during the pendency of the suit, defendant No.2 Heerabai has expired. As a result, the trial Court has

refused and declined to allow any amendment to the written statement as it was filed jointly by defendant Nos. 2 Hirabai and defendant No.3- the present petitioner. The another reason given by the trial Court is that the issue of ownership of the suit shop has no relevancy and hence proposed amendment is also not necessary. The third reason which is relevant is that the proposed amendment is sought after the trial has commenced and no exercise of due diligence was shown by the petitioner as to why the proposed amendment was not sought at an earlier stage during the life time of deceased defendant No.2 Hirabai.

9] It is pointed out by learned counsel for respondent No.1 that even the evidence of the respondent No.1-plaintiff and defendant No.1 M.S.E. D.C.L., is over and the matter was scheduled for evidence of the present petitioner. At this stage, as this application is filed, that too without giving any explanation about exercise of due diligence, the trial Court has rightly rejected the said application.

10] In my considered opinion, no fault can be found in the impugned order passed by the trial Court so as to warrant interference therein in the writ jurisdiction of this Court.

11] The Writ Petition, therefore, stands dismissed.

[DR.SHALINI PHANSALKAR-JOSHI, J.]