

dik

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

WRIT PETITION NO. 3329 OF 2014

Hasanali Merchant

...Petitioner

vs

Shabnam S. Indorwala & Anr.

...Respondents

.....

Mr Satyajeet Mirajkar for the Petitioner.

Ms Shabnam S. Indorwala Respondent No.1 in person.

.....

**CORAM : B.P.COLABAWALLA, J.
DECEMBER 12, 2018.**

P.C. :

This Writ Petition has been filed seeking to challenge the order passed by the Trial Court on 24th January, 2014 passed below Exh.46 in Regular Civil Suit No. 125 of 2013. Exh.46 was an application filed by the Plaintiff under Order VI Rule 17 of the Code of Civil Procedure, 1908 for amendment of the plaint. This application was filed shortly after filing of the suit. It is not in dispute that the amendment application was filed at the pretrial stage of the suit and before the issues were framed. The Trial Court examined the amendment sought as well as heard the objections of the Defendants to the said amendment. In paragraph 5 of the impugned order the Trial Court opined that admittedly the amendment sought is in the mandatory form and the Plaintiff had initially filed a suit simplicitor

for injunction against the Defendant. However, due to subsequent developments, namely, the construction of the plinth and erection of two floors by the Defendants, the amendment was necessitated. The Trial Court opined that the Plaintiff is, therefore, coming to the Court with additional facts, and therefore, want to claim the additional reliefs which are mandatory in nature. In these circumstances the amendment application was allowed by the Trial Court.

2 I have gone through the order passed by the Trial Court. I do not think, at this stage, any interference is called for in the impugned order under Article 227 of the Constitution of India. The Trial Court is correct in holding that the suit was not at the hearing stage and no harm would be caused to the Defendants if the amendment was allowed and neither was the nature of the suit changing by virtue of the amendment. It is, in these circumstances, that the application for amendment (Exh.46) was allowed by the Trial Court. I find no perversity in the impugned order nor is it vitiated by any error apparent on the face of the record requiring interference under Article 227 of the Constitution of India. The Writ Petition is, therefore, dismissed. However, there shall be no order as to costs.

(B.P.COLABAWALLA, J.)