

Shailaja

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION
WRIT PETITION NO. 6079 OF 2018**

Nilufer Maneck Avasia	]	Petitioner
Vs.		
The Trustees of the Funds & Properties	]	
of the Parsi Panchayat Bombay	]	
and others.	]	Respondents

.....

Mr. Sunil R. More, for petitioner.

Ms. Radhika Nair i/b Jayakar & Partners, for respondents.

.....

CORAM : R.G. KETKAR, J.

DATE : 7TH JUNE, 2018.

P.C.

Heard Mr. More, learned Counsel for the petitioner and Ms. Nair, learned Counsel for the respondents at length.

2. By this Petition under Article 227 of the Constitution of India, the petitioner has challenged the judgment and order dated 5th September, 2014 passed by the learned trial Judge, Court Room No.13 of the Court of Small Causes at Mumbai below Exhibit 27 in R.A.E Suit No.546/827 of 2003 as also the judgment and order dated 22nd March, 2018 passed by the Appellate Bench of the Court of Small Causes at Mumbai in Revision Application No.66 of 2015. By these orders, the Courts below rejected the notice Exhibit 27 taken out by defendant No.1 for condoning delay in filing written statement as also taking on record additional written statement of defendant No.1.

3. By order dated 5th September, 2014, the learned trial Judge rejected the notice on the ground that respondents/plaintiffs have made amendment only in respect of;

bringing on record the new trustees as well as in respect of

bringing on record defendants No.2 and 3 on their attaining majority.

4. The plaintiffs have brought on record new trustees in place of earlier trustees on account of elections held in October, 2008. To that extent, amendment is made in cause title of the plaint as also paragraph 1A is added. As far as defendants No.2 and 3 attaining majority is concerned, the plaintiffs have inserted paragraph 4A in the plaint.

5. The learned trial Judge in paragraph 10 observed that the defendants have made proposed amendment by way of additional written statement which is not in respect of amendment carried out by the plaintiffs. The Courts below were of the view that the additional written statement goes beyond the amended plaint namely amended cause title of the plaint, paragraph 1A and 4A of the plaint.

6. After arguing the Petition for quite sometime, Mr. More seeks permission to withdraw the additional written statement dated 27th August, 2013 and assures that within two weeks from today, he will file additional written statement restricting it only in respect of amendment made in the cause title of the plaint, paragraphs 1A and 4A of the plaint.

7. In view thereof, Petition is allowed to be withdrawn with liberty to file additional written statement in the aforesaid terms within two weeks from today.

6. All the parties including the trial Court to act upon an authenticated copy of this order.

[R.G. KETKAR, J.]