

IN THE HIGH COURT OF JUDICATURE AT BOMBAY***CIVIL APPELLATE JURISDICTION*****WRIT PETITION NO. 11135 OF 2016****Surendra Madhavrao Kajale****..... Petitioner****VERSUS****Pramod Madhavrao Kajale & Ors.****..... Respondents**

Mr.Ameya V. Borwankar for the Petitioner.

Mr.Sachin S. Punde for the Respondent nos.1 to 4.

CORAM : R.D. DHANUKA, J.**DATE : 16th OCTOBER, 2018****P.C.**

The papers are allowed to be produced at 03.00 p.m.

2. By this petition filed under Article 227 of the Constitution of India, the petitioner (original defendant no.1) seeks to impugn the order dated 11th March,2016 passed by the 6th Joint Civil Judge, Senior Division, Pune rejecting the application (Ex.92) filed under Order 6 Rule 17 of the Code of Civil Procedure, 1908 *inter alia* praying for amendment of the written statement.

3. The suit has been filed by the original plaintiff *inter alia* praying for partition and injunction in the year 2007. The defendant no.1 had already filed detailed written statement. The plaintiff thereafter examined the witnesses. During the course of the cross examination of the witness of the plaintiff, the defendant no.1 had put a suggestion to the plaintiff's witness that her mother was having a flat at Shaniwar

Peth, Pune and had also given a suggestion that her mother had sold the said flat. The said evidence was recorded in the year 2012. The defendant no.1 however made an application for amendment of the plaint on 12th January,2016. The said application was preceded by another application made by the defendant no.1 on 10th September,2012. The said application was however rejected by the learned trial judge. In the writ petition, this court passed an order granting liberty to the defendant no.1 to file a fresh application for amendment. Though the said order was passed on 11th April, 2014, the defendant no.1 filed a fresh application on 12th January,2016.

4. A perusal of the record indicates that the learned trial judge has rejected the said application by an order dated 11th March,2016 by passing a detailed order and more particularly on the ground that when the plaintiff was cross examined by the defendant no.1, the defendant no.1 had already put suggestion to the plaintiff that her mother was having a flat at Shaniwar Peth, Pune and the same was already sold by her mother. The learned trial judge has thus held that the defendant no.1 was not due diligence in filing an application for amendment of the written statement.

5. It is not in dispute that the entire evidence is already concluded long back and the matter is listed on board for final hearing tomorrow. I am thus not inclined to interfere with the impugned order dated 11th March,2016 passed by the 6th Joint Civil Judge, Senior Division, Pune.

6. Writ petition is devoid of merits and is accordingly dismissed.

No order as to costs.

7. The petitioner is directed to convey this order to the learned trial court for compliance.

[R.D. DHANUKA, J.]