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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.7115 OF 2018

Mrs.Malan Mahadik

...Petitioner

V/s.

Bhanudas L. Phadtare & Ors.

...Respondents

Mr.Ajit J. Kenjale for the Petitioner.

CORAM : R.D. DHANUKA, J.

DATE : 24TH OCTOBER, 2018.

P.C. :-

1. Pursuant to the order dated 30th August, 2018, notice upon the respondents have already been served. None appeared for the respondents when the matter was called out. No affidavit in reply has been filed.

2. By this petition filed under under Article 227 of the Constitution of India, the petitioner has impugned the order dated 2nd May, 2017 passed by the learned Civil Judge, Junior Division, Koregaon rejecting the application (Exhibit – 72) *inter-alia* praying for amendment of the written statement in a suit filed for declaration and permanent injunction.

3. The written statement was filed by the petitioner on 4th August, 2013. On 18th February, 2016, the plaintiff filed affidavit of evidence. The plaintiff filed an application for amendment on 9th

February, 2017. The application for amendment was resisted by the plaintiff on the ground that the petitioner seeks to improve her case after service of affidavit of evidence filed by the plaintiff upon her.

4. Learned counsel appearing for the petitioner states that the petitioner (original defendant no.1) is illiterate and was unable to get the relevant document when the written statement was filed by her. Recently the petitioner received those documents which would show that no area has remained in the name of the plaintiff in Revision Survey No.312/24.

5. A perusal of the application filed by the petitioner indicates that according to the petitioner those documents would be relevant for the purpose of deciding the subject matter of the suit. Though the plaintiff has already filed affidavit of affidavit, the fact remains that the cross-examination of the plaintiff has not been commenced. The plaintiff has not disputed that the defendant no.1 is illiterate. In these circumstances, I am inclined to grant an opportunity to the petitioner to amend the written statement filed by her before the learned Trial Judge.

6. I therefore, pass the following order :-

a). The impugned order dated 2nd May, 2017 passed by the learned Civil Judge, Junior Division, Koregaon below Exhibit – 72 is quashed and set aside. The application for amendment filed by the

petitioner (Exhibit – 72) is allowed. The amendment to the written statement shall be carried out within two weeks from today.

b). A copy of the amended written statement shall be served upon the plaintiffs' advocate simultaneously. It is made clear that no further extension of time would be granted. In view of the amendment to the written statement permitted by this court, the learned Trial Judge is directed to frame additional issues, if required, within two weeks from the date of the petitioner carrying out amendment to the written statement.

c). Learned Trial Judge is also directed to grant liberty to the original plaintiff to file additional affidavit of evidence on the basis of the additional issues that may be framed by the learned Trial Judge. The petitioner shall not seek any adjournment before the learned Trial Judge for the purpose of cross-examination of the plaintiff or on any other date for any reason whatsoever.

7. The writ petition is allowed in aforesaid terms. There shall be no order as to costs.

8. The petitioner is directed to convey this order to the respondents and the learned Trial Judge for record and compliance.

9. All the parties as well as the learned Trial Judge to act on the authenticated copy of this order.

Vasant
Anandrao Idhol

Digitally signed by Vasant
Anandrao Idhol
Date: 2018.10.26 11:47:58 +0530

(R.D. DHANUKA, J.)