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

WRIT PETITION NO.12417 OF 2017

K. Krishna Mohananand Giri Goswami ... Petitioner
V/s.
Bhishma Pithamah Maniram and ors ... Respondents

Mr. Prasad S. Dani, Senior Advocate a/w Mr. Amol P.
Mhatre, for the Petitioner.
Mr. Yashpal Thakur a/w Smt. Pravina J. Kanani, for
Respondent No.1.

CORAM : DR.SHALINI PHANSALKAR-JOSHI, J.

DATE : 18th APRIL, 2018.

P.C. :

1] Heard learned Senior 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 27.7.2017,
passed below Exh.150 in Special Civil Suit No.8 of 2016, thereby
rejecting the petitioner's application for extension of time, to deposit
costs of Rs.5,000/- and to carry out necessary amendment in the
written statement.

3] The submission of learned Senior Counsel for the
petitioner is that the said amendment in the written statement is

already allowed and only on the petitioner's failure to pay the costs within the prescribed time, it should not become infructuous. It is urged that the petitioner is ready to pay further costs as may be imposed by this Court, if the application is allowed.

4] The perusal of the impugned order passed by the trial Court, clearly goes to show that the suit was filed in the year 2006. Earlier also petitioner has filed the application for amendment in the written statement which was allowed. Thereafter this second application for amendment was filed. Again it was allowed by the trial Court subject to costs of Rs.5,000/-. The prescribed period for carrying out amendment under Order VI Rule 18 of the Code of Civil Procedure, is 14 days, however, the petitioner has failed to do so and and after lapse of 189 days, the application was filed for extension of time to deposit the costs. The trial Court has, therefore, rightly rejected the said application having regard to the facts of the present case.

5] However, only with an intention that the amendment which was allowed, should not become infructuous, merely on technical ground and in order to advance substantive cause of justice, this Writ Petition is allowed, subject to exemplary costs of Rs.75,000/- to be payable by the petitioner to respondent No.1 within two weeks from the date of this order, in addition to the costs of

Rs.5,000/- which were already imposed by the trial Court. On payment of costs, the petitioner to carry out the amendment within a week thereafter.

6] On failure of the petitioner to pay the costs within the stipulated time, the order of this Court shall stand automatically vacated without further reference to this Court.

7] As the suit is of the year 2006 and the respondent-plaintiff is of 95 years old, I am sure that the trial Court will make endeavour to decide the suit as expeditiously as possible.

8] The parties to act on the authenticated copy of this order.

[DR.SHALINI PHANSALKAR-JOSHI, J.]