

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

WRIT PETITION NO. 12992 OF 2017

Suhas Suryakant Doijode

....Petitioner

V/s.

Shirish Ramchandra Godbole & Anr.

....Respondents

Mr. P.S. Dani, Sr. Counsel a/w. Mr. Prasad P. Kulkarni for the petitioner.

Mr. Girish S. Godbole a/w. Mr. Jai Kanade i/b. Shruti Tulpule for the respondents.

CORAM : MRS. MRIDULA BHATKAR, J.

DATED : 13TH JUNE, 2018.

P.C.:

. This petition is filed invoking the Writ Jurisdiction of this Court under Article 227 of the Constitution of India taking exception to the order dated 07th July, 2017 passed by the learned District Judge-5, Solapur below Exhibit – 34 in Regular Civil Appeal No. 104 of 2016.

2. The Respondent No.1 has filed the suit for possession of the lease land and for recovery of the amount from the present petitioner. In the said suit, petitioner has filed Written Statement wherein he has admitted the claim of the plaintiff. The suit was tried and was decreed with cost. The prayer of the possession was also allowed against which

petitioner / defendant no.1 filed Regular Civil Appeal. During the pendency of the appeal, he moved application under Order 6 Rule 17 of the Code of Civil Procedure praying that the appellant / defendant no.1 be allowed to carry out the amendment in the written statement. The said application was rejected by the learned Appellate Court. Hence this Writ Petition.

3. The learned Senior Counsel for the petitioner has submitted that the petitioner/defendant no.1 was misguided by the plaintiff on the pretext that he has filed the suit for recovery of the rent amount from defendant no.2-Company and defendant no.1 i.e. the petitioner is only a formal party. It was subsequently misguided that their suit is not required to be contested as it is a plan to recover the rent and main grievance is against the defendant no.2-Company. The learned Senior Counsel relied and referred to the written statement filed by the present petitioner wherein he has admitted the claim of respondent no.1 i.e. the original plaintiff. The learned Senior Counsel submits that this admission of the plaintiff supposes that the appellant / petitioner was truly misguided by the plaintiff and one junior advocate was appointed at the behest of the respondent no.1/plaintiff and the appellant/petitioner acted upon the ill advice given by the concerned

advocate and thus lost the suit and now will be losing the appeal. The learned Senior Counsel further submitted that after coming across this and after obtaining the illegal assistance and advice, the application for amendment of the written statement was moved under Order 6 Rule 17 of the Code of Civil Procedure. The learned counsel has submitted that the learned Judge while rejecting, ought to have taken into this fact and proper perspective and should have the allowed the said application. He has submitted that whether fraud was played or not is a matter to be adjudicated and this amendment ought to have been allowed.

4. *Per Contra*, Mr. G.S. Godbole opposed this application and has submitted that this is a very mischievous application. He referred to the chronology of the events. He has submitted lease deed of 08th October, 2004. He also pointed out that the petitioner and respondent no.2 – Hindustan Petroleum Corporation Ltd. have agitated their claim before the Arbitrator and in the said proceedings also the petitioner did not say a word about such fraud. He has further submitted that there is no whisper in respect of the fraud in the memo of the appeal. He has submitted that it is a case wherein the petitioner is to be saddled with cost. He has submitted that the petitioner has taken the false stand

that he does not understand english or the proceedings but he is a Civil Engineer and is able to understand the consequences of his submissions before the Court.

5. Read the plaint, written statement, the impugned order and the relevant documents as produced before the Court. In the written statement, the petitioner has virtually admitted the entire claim of the plaintiff. I am informed that the plaintiffs have filed the affidavit-in-chief, however, petitioner / defendant no.1 did not cross-examine him. Suit was decreed on 15th September, 2015. The petitioner filed appeal on 18th February, 2016. One year thereafter, the application for amendment of written statement under Order 6 Rule 17 of Code of Civil Procedure was filed on 09th March, 2017. If fraud is alleged then it should be pleaded at the first instance when it was noticed by the party. In the present petition, assuming that the defendant no.1/petitioner was not aware of the consequences and therefore, he filed written statement as dictated by the plaintiff however, peacefully aware that the suit is decreed as a whole and that the petitioner / defendant no.1 had knowledge on 15th September, 2015 that he is going to lose the possession. He filed appeal on 18th February, 2016 and it means that the petitioner was aggrieved by the judgment and

decree passed by the learned Judge of the Trial Court and obviously under the circumstances, the petitioner ought to have mentioned about the fraud played on him in the memo of the appeal. However, the memo of appeal is completely silent about such fraud and he has not said a word about it. This itself shows that the amendment sought is not necessary and one year delay reduces its bonafides and such application cannot be entertained. The fact of fraud when it was within the knowledge of defendant no.1, he ought to have said about it in the memo of appeal. It is pointed out by the learned counsel for the respondents that the advocate who has drafted the memo of appeal i.e. advocate Mr. P.D. Kulkarni is the same advocate who has made application for amendment under Order 6 Rule 17 of the Code of Civil Procedure. There is no merit in this petition. The order passed by the learned District Judge-5, Solapur is legal and cannot be faulted with. No interference is required. It is a mischievous application and hence, cost of Rs.10,000/- (Rupees Ten Thousand) is imposed upon the petitioner.

6. Writ Petition stands dismissed.

7. The learned District Judge, Solapur is directed to expedite the

appeal and endeavour to dispose of the same on or before 30th
November, 2018.

(MRS. MRIDULA BHATKAR, J.)