

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

WRIT PETITION (ST.) NO.23959 OF 2018

Ramesh Chunilal Bothara
through POA

.. Petitioner

Vs.

Kaluram Vishnudas Kad (since deceased)
thoruhg his legal heirs

1A. Bhamabai Maruti Kad & Ors.

.. Respondents

Mr.S. S. Patwardhan for the petitioner.

None for the respondents.

CORAM : R.D. DHANUKA, J.

DATE : 23rd August 2018

P.C.:

. By this petition under Article 227 of the Constitution of India, the petitioner has impugned the order dated 5th July 2018 passed by the learned Trial Judge on the application below Exhibit-188 in Special Civil Suit No.1878 of 1998 filed under Order VI Rule 16 and Section 151 of the Code of Civil Procedure, 1908 for striking out of the defendants' pleading.

2. Additional written statement was admittedly filed by the defendant nos.1 and 3 on 18th July 2001 which was adopted by the defendant nos.2, 4 and 5 subsequently. The additional issues were recast by the trial Court some time in the year 2002. After recasting the issue, the petitioner (original plaintiff) filed an application below Exhibit-188 inter alia praying for striking out the defendants' pleading on the ground

that the additional written statement was filed by the defendant nos.1 and 3 without seeking leave of the trial Court and in any event, the averments made in the additional written statement were inconsistent with the stand taken in the original written statement filed on 20th February 1999. The learned trial Judge rejected the said application on various grounds. The earlier order was however reviewed in so far as the observation made by the trial Court that the petitioner had closed his evidence as far back as in the year 2009 is concerned. The learned trial Judge had rightly corrected the inadvertent error by stating that evidence of the petitioner was not closed.

4. It is not in dispute that the additional written statement was filed by the defendant nos.1 and 3 as far back as on 18th July 2001 which was subsequently adopted by the defendant nos.2, 4 and 5. No objection was raised by the petitioner for almost 16 years from the date of the trial Court taking additional written statement filed by the defendants on record. Thereafter, the petitioner had filed an application under Order VI Rule 16 read with Section 151 of the Code of Civil Procedure, 1908 inter alia praying for striking out of the defendants' pleading.

5. In so far as the contention of the learned counsel for the petitioner that it is the case of the defendants that the additional written statement is inconsistent with the stand taken in the earlier written statement filed in the year 1999 is concerned, the petitioner would be at liberty to point out inconsistencies, if any, to the witness examined by the petitioner, if any, on the ground that the defendants had taken a different stand in the additional written statement which was filed as far back as on 18th July 2001 and even at the stage of final arguments.

6. In my view, the application filed by the petitioner for striking out of defendants' pleading is misconceived and rightly rejected by the learned trial Judge. Writ petition is devoid of merit and is accordingly dismissed. No order as to costs.

R.D. DHANUKA, J.