

vai

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.11979 OF 2015

Smt.Jubeda M. Abbas	...Petitioner
V/s.	
M/s.Sola Hakim Medical Trust & Ors.	...Respondents

Mr.Sanjay Patil for the Petitioner.

Mr.Vaibhav Sugdhare with Mr.Amit Mehta I/b Mahimtura & Co. for the Respondent No.3.

CORAM : R.D. DHANUKA, J.
DATE : 30TH AUGUST, 2018.

P.C. :-

1. By this petition filed under Article 227 of the Constitution of India the petitioner has impugned the order dated 23rd October, 2015 passed by the 7th Joint Civil Judge, Senior Division, Thane in Special Civil Suit No.766 of 2007 (Exhibit – 114) seeking amendment to plaint under Order VI Rule 17 of the Code of Civil Procedure, 1908. The suit has been filed by the petitioner thereby challenging the document dated 9th December, 1989 on various grounds.

2. At the instance of the petitioner herself, the respondent no.1 is deleted from the cause title of the plaint. The petitioner thereafter applied for amendment to the plaint so as to make an additional averments that since the respondent no.1 has already

expired prior to the alleged execution of document, the alleged document could not have been executed by the respondent no.1.

3. It is not in dispute that the suit document is already exhibited before the learned trial Court. The trial is at the argument stage. I am thus not inclined to interfere with the impugned order dated 23rd October, 2015 passed by the learned trial Judge.

4. Insofar as the prayer for setting aside the order of “no cross” passed by the learned trial Judge is concerned, the petitioner has made out a case for recall of the setting aside order of “no cross” and is granted permission to cross-examine the witness examined by the defendants. It is made clear that the petitioner will not ask for any unnecessary adjournment before the learned trial Judge. The witness of the defendants shall remain present for the purpose of cross-examination on the dates as may be fixed by the learned trial Judge.

5. If there is no dispute that the original defendant no.1 expired prior to the date of the alleged execution of the document, which is already marked as exhibit, the petitioner would be at liberty to pursue this objection at the time of hearing of the suit. It is made clear that this Court has not expressed any views on merit of the matter. Whether the document in question is at all executed by the defendant no.1 or not, the same shall be decided by the learned trial Court on evidence after considering the objection of the defendants.

6. The petition is disposed of in aforesaid terms. There shall be no order as to costs.

(R.D. DHANUKA, J.)