

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 11272 OF 2015

ASHOK BAPU KONDODI
VERSUS
PUNA SHRAVAN PATIL, L.RS. SUKHDEO AND OTHERS

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Advocate for the Petitioner : Shri A. I. Deshmukh
Advocate for Respondent Nos. 1 to 5 : Ms. P. B.
Khanderao h/f. Shri V. P. Patil

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CORAM : RAVINDRA V. GHUGE, J.

DATED : 11th DECEMBER, 2019

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PER COURT :

1. I have considered the submissions of the learned Advocates for the respective sides and have gone through the petition paper book with their assistance.

2 The Petitioner / original plaintiff in Regular Civil Suit No. 333/2012 (old RCS No. 469/2001), is aggrieved by the order dated 12/08/2014 passed by the Trial Court, by which, his application Exhibit 95 seeking amendment to the plaint in the light of the written statement, has been rejected.

3. The Petitioner has actually filed the suit for seeking return of the earnest amount as the agreement to sell was not being implemented by the defendant. Considering that the agreement had no future, the plaintiff deemed it appropriate to seek the return of the earnest amount.

4. The defendant filed his written statement on 11/04/2002 and contended that the defendant is ready and willing to perform the contract. Pursuant to the said pleadings, the plaintiff has not immediately moved an application for seeking amendment to the plaint. Same was not done and by Exhibit 95, it was sought on 08/01/2014 that the plaintiff may be permitted to amend the plaint and introduce the pleading that the plaintiff is also willing and ready to perform the agreement.

5. It requires no debate that in a matter of specific performance of contract, the person seeking the enforcement of a contract has to specifically plead in the plaint that "he is ready and willing to perform his

part of the contract". If these pleadings are not set out in the plaint, such a litigant cannot be permitted to introduce such a pleading subsequently and more so after a period of 13 years of the pendency of the suit. The suit is lodged in 2001 and Exhibit 95 has been filed on 08/01/2014.

6. Keeping the settled position of law in view and the proviso below Rule 17 under Order VI introduced in 2002 to the Code of Civil Procedure, I do not find that the impugned order declining leave to amend could be termed as being perverse or erroneous.

7. In view of the above, this petition, being devoid of merit is, therefore, dismissed.

(RAVINDRA V. GHUGE, J.)

shp/-