

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

WRIT PETITION NO.5165 OF 2018

Sanjivani @ Sunita Kalgonda Patil .. Petitioner

V/s.

Shrimati Sushila Ganpati Harge and Ors. .. Respondents

Mr.Sangdeep S. Koregave for the petitioner

Mr.Manoj Chauhan I/b Mr.Vinod P. Sangvikar for the respondent
no.3

Mr.Drupad S. Patil for the respondent nos.1 and 2

CORAM: K.K. TATED, J
DATED : JANUARY 21, 2019

P.C. :

1 Heard.

2 By this Writ Petition, Petitioner original defendant no.1 is challenging the order dated 21.12.2017 passed by IVth Joint Civil Judge, Junior Division, Ichalkaranji below Exhibit-59 in Regular Civil Suit No. 269 of 2009 allowing Respondent plaintiff's amendment Application under Order VI Rule 17 of the Code of Civil Procedure, 1908.

3 The learned counsel for the Petitioner submits that Trial Court failed to appreciate the fact that Respondent original

plaintiff filed Application for amendment at belated stage. He submits that Suit was filed in 2009 and Application for amendment was filed on 24.07.2017. These facts were not considered by the Trial Court at the time of deciding Application under Order VI Rule 17 of the Code of Civil Procedure, 1908.

4 It is to be noted that in the present proceedings, during the pendency of the suit, Petitioner original defendant no.1 carried out construction on the suit property. Hence, Respondent original plaintiff filed Application for carrying out amendment in the plaint with direction to the Petitioner to remove said construction. These facts were considered by the Trial Court at the time of deciding Respondent original plaintiff's application. Observation made by the Trial Court in paragraph 7 shows that during the pendency of the Suit Petitioner original defendant no.1 carried out construction on the suit property.

5 In view of these facts, I do not find any substance in the present Writ Petition.

6 At this stage, Petitioner original defendant no.1 submits that during the pendency of the present Writ Petition Trial Court has already passed order of "No written statement". He submits that Petitioner may be permitted to file additional written statement in the Trial Court.

7 The learned counsel for the Respondent no.1 original plaintiff submits that they have no objection allowing Petitioner to file additional written statement. Considering these facts,

following order is passed:

- a) Writ Petition stands rejected.
- b) No order as to costs.
- c) Petitioner original defendant no.1 is permitted to file additional written statement with copy to other side on or before 30.03.2019.

(K.K. TATED, J.)