

Shailaja

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION
WRIT PETITION NO.12249 OF 2018

Pramod Sakharam Joshi and others] Petitioners
Vs.
Lataben Bhanji Singadiya and Anr.] Respondents

.....
Mr. Jitendra H. Oak, for Petitioners.
Mr. Y.R. Rathod, for Respondents.

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CORAM : R.G. KETKAR, J.

DATE : 30th JANUARY, 2019.

P.C:

Heard Mr. Oak, learned Counsel for the petitioners and Mr. Rathod, learned Counsel for the respondents at length.

2. This Petition takes exception to the order dated 27th July, 2018 passed by the learned third Joint Civil Judge, Junior Division, Kalyan below Exhibit 43 in R.C.S No.120 of 2003. By that order, the learned trial Judge rejected the application made by the petitioners for amending the written statement.

3. Rule. Mr. Rathod waives service. Having regard to the narrow controversy raised in this Petition as also at the request and by consent of learned Counsel for the parties, rule is made returnable forthwith and the Petition is taken up for final hearing.

4. It is not in dispute that the respondents herein have instituted suit against Sakharam Waman Joshi (for short 'Sakharam'). Sakharam died on 6th June, 2006. The petitioners, who are legal representatives of Sakharam filed

pursis at Exhibit 26 to the effect that they do want to file additional written statement. From record, it is also evident that the learned predecessor of the trial Judge passed order to the effect that as there is no affidavit supporting the pursis, there is no additional written statement of the defendant on record. Even on 5th March, 2012, the learned trial Judge passed order below Exhibit 1 to the effect that suit to proceed without additional written statement. The petitioners, therefore, filed application Exhibit 43 for amending the written statement which was rejected by the impugned order.

5. Mr. Oak submits that even though application for amendment is rejected, the learned trial Judge was not justified in passing order dated 5th March, 2012 below Exhibit 1 to the effect that there is no additional written statement on record. The learned trial Judge ought to proceed with the suit on the basis of the written statement already filed by Sakharam. Mr. Rathod does not dispute the fact that Sakharam has filed written statement during his lifetime.

6. In view thereof, the learned trial Judge will proceed with the suit on the basis that written statement filed by Sakharam is of his legal representatives. Subject to this clarification, it is not necessary to interfere with the impugned order. Rule is discharged with no order as to costs. As the suit is of the year 2003, liberty is granted to the plaintiffs to file application before the learned trial Judge for deciding the suit in a time bound manner. If such application is made, the learned trial Judge will pass appropriate order keeping in mind the fact that suit is of the year 2003. Order accordingly.

[R.G. KETKAR, J.]