

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION

**WRIT PETITION NO.13605 OF 2018**  
**WITH**  
**CIVIL APPLICATION NO.330 OF 2019**  
**WITH**  
**WRIT PETITION NO.4052 OF 2017 (NOB)**

Musaddique Abdul Qadir Bubere ...Petitioner

vs.

Samina Abdul Qadir Bubere and Ors. ...Respondents

Mr. Karan Bhosale I/b. Mr. R.J. Rathod a/w. Mr. Sohail Ahmed,  
for the Petitioner.

Mr. Hafeez Rehman I/b. Mr. Abdul Millwala, for Respondent No. 1

**CORAM : M. S. SONAK, J.**

**DATE : APRIL 08, 2019**

**JUDGMENT**

Writ Petition No. 4052 OF 2017

. The challenged order dated 30<sup>th</sup> March, 2017 below Exhibit Nos. 120, 125, 129 and 130 is not on board today. However, at the request of learned counsel for the parties, the same has taken on board. The learned counsel for the Petitioner on the basis of instruction seeks leave to withdraw this Petition. Liberty is granted.

2. The Writ Petition No. 4052 of 2017 is disposed of as withdrawn.

Writ Petition No. 13605 of 2018

3. The challenge is to the order dated 27<sup>th</sup> September, 2018 made below Exhibit 133 by which the Petitioner's application seeking leave to amend the written statement came to be rejected.

4. The record indicate that this application at Exhibit 133 was filed on 11<sup>th</sup> April, 2017. Mr. Karan Bhosale, the learned counsel for the Petitioner, on instruction, states that the affidavit in lieu of examination in chief was filed only on 30<sup>th</sup> October, 2018. This means that the application seeking leave to amend was filed prior to the commencement of the trial in the suit. Normally, for this reason as well as considering the effect that the amendment applied for, was to the written statement, such application should have been liberally construed.

5. The learned trial Judge has held that the amendment is nothing but mere repetition of the averments made in the written statement. Although there is some reference in the written statement, to now what is sought to be pleaded, by way of amendment, this was not a fit case whether the learned trial Judge should have rejected the pre-trial application seeking leave to amend. In fact, since there was already reference to this aspect made earlier in the written statement, there is no question of

serious prejudice to the Plaintiff.

6. Accordingly, the impugned order dated 27<sup>th</sup> September, 2018 is set aside subject to the Petitioner's paying cost of Rs. 10,000/- in favour of the Respondent No. 1 – Original Plaintiff within a period of two weeks from today.

7. The costs may be directly paid to Respondent No. 1 or deposited before the learned trial Judge. If deposited, Respondent No. 1 is at liberty to withdraw the same unconditionally.

8. Once the costs are paid, amendment to be carried out within four weeks.

9. In case, the Plaintiff desires to file additional affidavit in lieu of examination of chief or a fresh affidavit in lieu of examination in chief, the Plaintiff is at liberty to do so.

10. Amendment is allowed to the written statement.

11. Rule is discharged in Writ Petition No. 4052 of 2017 and rule is made absolute in the aforesaid terms in Writ Petition No. 13605 of 2018.

12. All concerned to act on the basis of authenticated copy of this order.

**(M. S. SONAK, J.)**