

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition NO. 47 OF 2019

Smt. Shaila alias Shailaja Bhalchandra	
Bhagwat (since deceased) Through L.R.	
Pandharinath @ Uday Bhalchandra Bhagwat	...Petitioner
<i>Versus</i>	
Shri. Prafulla Dattatraya Phadake	...Respondent

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Mr. V.N. Bolinjkar, Advocate for the Petitioner.
Mr. Akash D. Warang, Advocate for the Respondent.

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CORAM : R. G. KETKAR, J.

DATE : 09th JULY, 2019

P.C.

1. Heard Mr.V.N. Bolinjkar, learned counsel for the petitioner and Mr.Akash Warang, learned counsel for the respondent, at length.
2. This Petition takes exception to the order dated 16.12.2018 passed by the learned 7th Jt. Civil Judge, Senior Division at Thane below Exhibit-157 in R.C.S. No.498/2003. By that order, the learned trial Judge allowed the application made by the respondent, hereinafter referred to as the 'plaintiff', under Order VI Rule 16 of the Code of Civil Procedure, 1908 (for short, 'C.P.C.') for striking out additional written statement dated 4.7.2018 at Exhibit-156 filed on behalf of defendants No.1 & 2.

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

4. Mr.Bolinjkar states that defendant No.2 is present in the Court today. He has tendered a photo-copy of his Aadhaar Card, which is taken on record and marked 'X' for identification.

5. Upon taking instructions from him, Mr.Bolinjkar assures that he will delete paragraph-1 of the additional written statement and also substitute the heading 'additional written statement on behalf of defendants No.1 & 2' by the heading 'written statement of defendant No.2 in the capacity of legal representative of defendant No.1'. He states that the next date before the trial Court is 22.7.2019. He assures that before the next date of hearing, he will carry out the necessary amendment and serve amended copy on the learned counsel for the plaintiff in the trial Court. Statements made on instructions are recorded.

6. Mr.Warang has no objection for adopting this course.

7. In view thereof, the impugned order dated 16.12.2018 passed by the learned 7th Jt. Civil Judge, Senior Division at Thane below Exhibit-157 in R.C.S. No.498/2003 is set aside. Defendant No.2 shall

file written statement in the aforesaid terms before the next date of hearing and shall serve copy in advance on the other side. Rule is made absolute in aforesaid terms with no order as to costs. Petition is disposed of.

8. All concerned parties, including the trial Court, to act upon the authenticated copy of this order. Order accordingly.

(R. G. KETKAR, J.)

Deshmane (PS)