

FARAD CONTINUATION SHEET No.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO. 3310/2017

(DARSHANA CO-OP. HOUSING SOCIETY, NAGPUR **VERSUS** LILABAI BHAURAOJI TAYWADE & ANR)

Office Notes, Office Memoranda of Coram,
 appearances, Court's orders of directions
 and Registrar's orders

Court's or Judge's orders

Shri M.R. Joharapurkar, counsel for petitioner.
 Shri P.B. Patil, counsel for R-1.

CORAM : A.S. CHANDURKAR, J.

DATE : MARCH 13, 2019.

The petitioner who is the defendant no.4 has challenged the orders passed below Exhibit 174 and Exhibit 175 in Regular Civil Suit No.3409 of 2001.

The application at Exhibit 174 was filed for seeking permission to place on record a copy of supplementary agreement dated 30.09.1993 and death certificate of an attesting witness to the said agreement. The application at Exhibit 175 was for amending the written statement.

Shri M.R. Joharapurkar, learned counsel for the petitioner submits that in the written statement as originally filed it was pleaded that there was a supplementary agreement between the parties which was duly acted upon by the original vendor Gulabrao Patole. The written statement was filed in the year 2006 and at that time a copy of the supplementary agreement was handed over to the counsel while preparing the written statement. However, the same was not referred to in the written statement. According to him, the proposed amendment was clarificatory in nature which could be seen from the averments made in the amendment application. As the proposed amendment was clarificatory in nature the same was liable to be granted. While

rejecting the application filed below Exhibit 174, the trial Court lost sight of the fact that the copy of supplementary agreement had been placed on record alongwith the list dated 06.12.2016.

Shri P.B. Patil, learned counsel for the respondent no.1 opposed the aforesaid submissions. According to him, the written statement was filed in the year 2006 and without any sufficient explanation for the belated application and in absence of due diligence on the part of defendant no.4, the amendment was sought to the written statement. It was only an attempt to delay the proceedings and the trial Court was justified in dismissing both the applications.

I have heard the learned counsel for the parties and after perusing the impugned orders, it is seen that the written statement was filed by the defendant no.4 in September-2006. In the application below Exhibit 175, there are no pleadings on the aspect of due diligence as contemplated by the proviso to Order VI Rule 17 of the Code of Civil Procedure, 1908. The trial has already commenced. In view of the fact that the written statement was filed in the year 2006 and there is no sufficient ground assigned for seeking amendment of the written statement after lapse of almost ten years, no fault can be found with the order passed below Exhibit 175.

Insofar as the order passed below Exhibit 174 is concerned, the same has been passed on an application seeking permission to file on record documents as per the list. In the impugned order passed below Exhibit 174 it has been observed that the application at Exhibit 171 seeking permission to lead secondary evidence has already been rejected. It is however seen that the application at Exhibit 171 alongwith application at Exhibit 179 is still pending for adjudication before the trial Court.

It is thus found that it is not necessary to interfere with the order passed below Exhibit 174 for the reasons stated therein. In case the trial Court while considering the application below Exhibit 179 on its own merits is inclined to grant that prayer, it can also consider the aspect of grant of permission to produce the supplementary agreement dated 30.09.1993 on record in accordance with law.

With aforesaid observations, writ petition is disposed of with no order as to costs. Pending civil applications also stand disposed of. Since the suit is of the year 1995, the trial Court shall endeavour to decide the same by the end of December-2019.

JUDGE

APTE