

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD
WRIT PETITION NO.2196 OF 2020

Vijay s/o Sharadchandra Kotnis

Petitioner

Versus

Mahadeo s/o Sadanand Nargundi
and another

Respondents

Mr.R.B.Dhaware, advocate for the petitioner.
Mr.N.V.Mande, advocate for Respondent No.1

CORAM : ROHIT B. DEO, J.

DATE : 07th February, 2020.

P.C. :

1 The petitioner is the plaintiff in Special Civil Suit No.231 of 2010 brought for specific performance of agreement dated 28.11.2009.

2 After passage of nine years from the institution of the suit, and after commencement of the trial, the petitioner preferred an application seeking amendment of the plaint.

3 The petitioner sought to introduce a version that prior to the suit agreement dated 28.11.2009, an agreement dated 13.11.2009 was executed between the parties, which was notarised. The petitioner made an attempt to justify the delay or

rather the failure to bring the matter to the notice of the Court before the commencement of the trial, by stating that since the original agreement dated 13.11.2009 was not in possession of the petitioner, no reference thereto was made in the suit plaint. The petitioner contended that after recent discussions with the learned advocate, it was felt necessary to amend the suit plaint.

4 The trial Court has dismissed the application seeking permission to amend the suit plaint and rightly so. The trial has commenced. The explanation given is most unsatisfactory. Nothing prevented the plaintiff from making a reference to the agreement dated 13.11.2009, even if it is assumed that the original thereof was with the defendants. Notably, when the petitioner preferred the application, which is rejected by the order impugned, he sought to produce on record the photocopy and further sought permission to adduce secondary evidence. It is a different matter that the application for permission to lead secondary evidence is rejected. However, such a course could have been followed by the petitioner when he brought the suit. The agreement dated 13.11.2009 could have been disclosed and at a later stage, an attempt could have been made to adduce secondary evidence. It is clear that the petitioner was most negligent. In any event, even according to the petitioner, the

defendants sought certain changes in the agreement dated 13.11.2009 and later on the suit agreement dated 28.11.2009 was executed. It is but obvious that the relevant agreement would be the suit agreement, which is the agreement holding the field.

5 The trial Court has noted that the petitioner-plaintiff is not cooperating in expeditious disposal of the suit. The parties are directed to cooperate with the trial Court in expeditious disposal of the suit. The trial Court shall finally decide the suit within six months. It is made clear that no further adjournment shall be granted unless extremely compelling case is made out.

6 Petition is dismissed.

ROHIT B. DEO
JUDGE

adb