

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**CIVIL APPELLATE JURISDICTION**  
**WRIT PETITION NO. 8921 OF 2021**  
**WITH**  
**WRIT PETITION NO. 8922 OF 2021**

Radheshyam s/o Ramlal Dhanuka .. Petitioner

Versus

Alok Jajodia and ors

.. Respondents

...

Mr. Prashant Pandey with Aiqan Memon, Vidhi Karia i/b Ashok M. Saraogi for the petitioner.

Ms.Swati Sawant with Mrs.Vrishali Raje for the respondent nos.2 and 3.

Mr.P.V. Rajan, AGP for respondent State.

**CORAM: BHARATI DANGRE, J.**

**DATED : 15<sup>th</sup> DECEMBER 2021**

**P.C:-**

1           On being confronted with an important aspect involving the two Writ Petitions, being what the plaintiffs sought was amendment in the affidavit of evidence in chief, or bringing on record the additional affidavit in evidence incorporating the subsequent events, as set out in the schedule of amendment and proposed to be inserted as para-4A, learned counsel for the petitioner concede to the fact that he ought to have sought amendment in the plaint, since the relevancy of the document in form of an affidavit executed by one Suraj Parmar dated

*Tilak*

3/9/2005, who was not in a position to stand in the witness box on account of his demise, to prove it, ought to have been brought on record by way of amendment in the pleading.

3 Counsel for the petitioner therefore, seek withdrawal of both the Writ Petitions with liberty to prefer an application seeking for amendment of the pleading itself i.e. the plaint.

4 On such an application being brought, it is open for the learned Judge to consider the application on the parameters of Order VI Rule 7 of the Code of Civil Procedure.

5 Learned counsel for the respondents has expressed concern by stating that the Suit is pending since 2008 and is at the stage of its culmination. She submits that the attempt made by the petitioner was merely to delay the proceedings in the Suit.

Since the counsel for the petitioner is desirous of withdrawing the Writ Petitions with liberty as prayed for, to bring the application for amendment, I leave it open to the learned Judge who is in seisin of Suit No.3164/18 either to grant or reject the amendment, and if he chose to grant the amendment, he is at liberty to consider the postponement of the proceedings for a limited time.

Learned Judge shall take a decision considering the merits of the matter and keeping in mind the fact that the Suit is

pending since 2008.

Needless to state that the application for amendment of the pleadings shall be decided, being uninfluenced by the earlier orders passed by the learned Judge which have been assailed in the Writ Petitions.

**SMT. BHARATI DANGRE, J**