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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.3314 OF 2014

Shriram s/o Arjunrao Mande

PETITIONER

VERSUS

Shivaji Baburao Kale and Others

RESPONDENTS

.....
Mr. Umakant Giri h/f Mr. R. D. Biradar, Advocate for petitioner
.....

[CORAM : NITIN B. SURYAWANSHI, J.]

RESERVED ON : 6th JANUARY, 2022

PRONOUNCED ON : 12th JANUARY, 2022

ORDER :

1. The petitioner is aggrieved by the order passed by learned Joint Civil Judge, Senior Division, Latur below Exhibit-95 in Special Civil Suit No. 95 of 2010, thereby rejecting the application filed by the petitioner seeking correction in the affidavit filed in lieu of examination in chief.

2. The petitioner – original plaintiff has filed the suit for specific performance of agreement. In the plaint, the petitioner has pleaded that cheque bearing No. 281978 dated 3rd February, 2010 amounting to Rs.15,000/- was given by the petitioner to the defendants and the defendants had received the said amount

through bank. The said cheque was of State Bank of India, Latur Branch. However, inadvertently, in the affidavit filed in lieu of the examination in chief, the petitioner averred that the cheque was of State Bank of Hyderabad, Branch Latur. After realizing this mistake, the petitioner filed application Exhibit-95 seeking to amend the affidavit filed in lieu of examination in chief. The said application is rejected by the trial court mainly on the ground that the petitioner/plaintiff's cross-examination has been over on 20th January, 2011 and thereafter the petitioner has adduced evidence of his witnesses i.e. PW-2 to PW-5. The trial court, therefore, came to the conclusion that there is no provision in law to allow amendment in the affidavit of examination in chief. Hence, the trial court rejected the application Exhibit-95.

3. There is no illegality or perversity in the order impugned in the present writ petition. Therefore, this court is not inclined to interfere in the order impugned in the writ petition.

4. However, taking into consideration the fact that there appears inadvertent mistake in mentioning name of the bank in the affidavit filed in lieu of the examination in chief and the same does not affect merits of the case, the petitioner is at liberty to seek permission of the trial court for his re-examination, in order to correct the inadvertent mistake in the affidavit in reply in

respect of the name of the bank. In case, such application is filed, the same may be favourably considered by the trial court.

5. With these observations, the writ petition is disposed of.

[NITIN B. SURYAWANSHI]
JUDGE

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