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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.6276 OF 2019

RATILAL S/O GANPAT PATIL
VERUS
LATABAI W/O. BHALCHANDRA DESHMUKH & OTHERS

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Mr B. R. Waramaa, Advocate for petitioner;
Mr A. S. Sawant, Advocate for respondent No.1;
Mr P. G. Borade, A.G.P. for respondent Nos.2 & 3

**CORAM : SMT. BHARATI DANGRE, J.
DATE : 19th January, 2022**

PER COURT:

1. Heard the learned Counsel for the petitioner, the learned Counsel for contesting respondent No.1 and the learned AGP for respondent Nos.2 and 3

The petitioner is aggrieved by the order, rejecting the amendment sought by him in his written statement under the impugned order dated 16/11/2018, passed by the learned Civil Judge Senior Division, Amalner.

2. Respondent No.1 is the plaintiff in Regular Civil Suit No.94/2016, filed before the learned Civil Judge Senior Division, seeking a declaration to the effect that the sale deed dated 23/08/2012 is illegal and not binding upon the plaintiff. Pertinent

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to note that the agricultural land owned and possessed by the plaintiff was purchased by the State Government under a scheme floated by the Social Welfare Department, which contemplated purchase of land from the agriculturist at the market rate for the purpose of its disbursement to the landless and those below poverty line. Under the said scheme, the land of the plaintiff came to be purchased vide a registered sale deed by the officers of the State Government and the plaintiff hold defendant No.3, officer of the Social Welfare Department to be responsible for all the alleged misdemeanor, when she alleged that she has not received the entire consideration towards the land though a sale deed was executed by her. Another objection raised by her that the sale deed is executed without obtaining consent of the co-sharers and the cheque issued in her favour by defendant Nos.4 and 5, was dishonoured and therefore, she filed a suit in which she impleaded the Collector as well as the Social Welfare Officer of Jalgaon as defendants along with the present petitioner as defendant No.3 and other officers of the Social Welfare Department as party respondents. She sought a declaration that the sale deed executed by her shall be declared as null and void and not binding upon her.

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3. In the suit so instituted, defendant Nos.1 to 4 filed their written statement jointly and denied the claim raised in the plaint. It was specifically pleaded in the written statement that the plaintiff was paid the amount from time to time from the Government and therefore, the allegation that the cheque was not honoured, is an incorrect statement. The plea of limitation is also raised in the written statement.

4. In the wake of the contesting pleadings, the issues came to be settled in the suit on 23/06/2017 and the burden is cast on the plaintiff to prove that by misrepresentation and by playing fraud upon her, defendant Nos.1 to 4 unlawfully got executed the sale deed dated 23/08/2012 in favour of the State. The plaintiff is also called upon to discharge the burden that the cheque of Rs.10,58,500/- issued by the defendant Nos.3 and 4 as consideration of the said sale deed has returned dishonoured and whether the plaintiff prove that the defendant Nos.3 and 4 had obtained her signatures on blank papers and blank cheques. During the pendency of the said proceedings, the defendant No.3 (the present petitioner) filed an application under Order VI Rule 17 of the Code of Civil Procedure, seeking amendment to the

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written statement by inserting para 15(A) and 15(B), and this application came to be rejected under the impugned order by recording that defendant No. 3 has failed to meet the necessary ingredients of Order VI Rule 17 and particularly due diligence being adopted by him, justifying amendment to be allowed when the trial has already commenced.

On perusal of the application filed vide Exh.41, it can be seen that by the amendment, defendant No.3 has sought to bring on record the fact of his retirement and an objection being raised to the fact that whatever act done by him while discharging of his official duties and since he is no longer in service, he cannot be fastened him with the liability. Apart from this, certain necessary clarifications in respect of the payment being made to the co-sharers being the sisters of the plaintiff are also sought to be brought on record by stating that the plaintiff and her three sisters have accorded their 'no objection' and also filed their affidavit recording that they have received the respective amount as a consideration towards sale of the properties. The amendment, when clearly read, is nothing but a clarification to the written statement and in any way, it do not raise any new plea. Merely on the ground that since the trial has commenced, the same deserves

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rejection, is not a ground which can be justified. True it is, that an embargo created under Order 6 Rule 17 require due diligence to be adopted by the parties before an amendment has to be allowed, but at the same time, the main provision of Order 6 Rule 17, which confer power upon the Court to allow any amendment at any stage of the proceedings, provided it is necessary for effective adjudication of the dispute between the parties, has been lost sight by the learned Judge while passing the impugned order.

5. In the wake of the rival pleadings as well as issues that have been settled, the amendment is very much necessary for effective adjudication and the same has been wrongly refused by the learned Judge.

6. It is pertinent to note that, on 04/06/2019, this Court had adjourned the proceedings in Regular Civil Suit and this order is in operation till date. As a consequence, in any case, the trial in the suit is standing still, with no progress. If three years time has been spent in this Court, I see no hesitancy if on granting amendment which is necessary for effective adjudication of the dispute between parties in the wake of the issue that has been settled, prejudice is caused to the plaintiff if this amendment is

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granted. It is informed that the plaintiff has been cross-examined and in the wake of the fact that the proceedings in the suit are stayed on 04/06/2019, the necessary amendment being permitted to be carried out in the written statement within a period of one week from today by the parties, requesting the learned Judge to take the case on board. After the amendment being carried out, the learned Trial Court shall make every endeavour to complete the proceedings in the respective suit within a period of six months from the said date.

With the aforesaid directions, the writ petition stands allowed by quashing and setting aside the impugned order with a direction issued as above.

(SMT. BHARATI DANGRE, J.)

sjk