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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1461 OF 2019

Eversmile Construction Co Pvt Ltd & Anr

.. Petitioners

Versus

Manek Gajanan Koli & Ors

.. Respondents

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- Mr. D.V. Deokar and Mr. D. Parikh i/by Parimal K. Shroff & Co. for Petitioners
- Mr. Mangesh S. Parte for Respondent Nos. 1 and 2
- Mr. Deepak Chitnis i/by Mr. Deepak Chitnis-Chiprikar for Respondent Nos. 4 to 6

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CORAM : MILIND N. JADHAV, J.

DATE : DECEMBER 19, 2022

P.C.:

1. Heard Mr. Deokar, learned Advocate for Petitioners; Mr. Parte, learned Advocate for Respondent Nos. 1 and 2 and Mr. Chitnis, learned Advocate for Respondent Nos.4 to 6.

2. The petition is filed for challenging order dated 17.12.2018 passed in Notice of Motion No.4363 of 2018 in Suit No.8626 of 1998. Perusal of the impugned order reveals that Notice of Motion was filed by Plaintiffs for discarding the amended written the statement of Defendant No.2 which was beyond the scope and extent of the amendment carried out to the plaint. Plaintiff contended that Defendant No.2 failed to file its written statement and only after Plaintiff filed their evidence and documents, Defendant No.2 filed their say to the documents regarding admission of denial. However, in

the meanwhile, Defendant No.4 expired and his legal heirs i.e. Defendant Nos.4/a to 4/b were brought on record and accordingly the plaint was amended. Plaintiff contended that after amendment was carried out, all defendant were required to file their written statement to the extent of the amendment, but Defendant No.2 filed an exhaustive and comprehensive written statement. It is contended by the Petitioner i.e. Defendant No.2 that the learned Trial Court had accepted the pursis of Defendant Nos.1 and 2 to take the additional written statement of Defendant No.1 and written statement of Defendant No.2 on record by order dated 12.6.2018. Hence, since that order was not challenged the Notice of Motion for discarding the written statement of Defendant No.2 was not maintainable.

3. Perusal of record before the learned Trial Court reveals that the case of the Petitioner is comprehensively considered by the learned Court while passing the impugned order. It is seen that in the pursis filed by Defendant Nos.1 and 2, it was never disclosed by them that previously Defendant No.2 did not file its written statement. That apart, Defendant No.2 did not seek leave of the Trial Court for filing the written statement beyond the scope of the amended plaint. This suppression by Defendant No.2 i.e Petitioner herein is clearly evident and is writ large on the face of record. Defendant No.2 inadvertently has taken advantage of its own wrong in not filing its earlier written

statement and treating the suit plaint as a fresh case. In that view of the matter, the reasoning and speaking order given by the learned Trial Court is apt and does not call for any interference.

4. The impugned order is sustained.

5. At the profuse request of Mr. Deokar liberty is granted to take out appropriate Application, if so permissible, in accordance with law for seeking leave of the Trial Court to file exhaustive written statement along with Application for condonation of delay. If any such Application is made, the same shall be decided by the learned Trial Court on its own merits and strictly in accordance with law.

6. With the above directions, Writ Petition is disposed.

[MILIND N. JADHAV, J.]

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