

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.5875 OF 2021

Laxmikant Bipinchandra Pardeshi and Anr. ..Petitioners
Versus
Sachin Madanlal Kankariya and Anr. ..Respondents

Mr. Vivek Joshi i/by Jayendra D. Khairnar, for the Petitioners.
Mr. Mohit Bhansali, for the Respondents.

CORAM : NITIN W. SAMBRE, J.

DATE : 28th FEBRUARY, 2022

PC.

1. Perused the impugned order whereby, the petitioners'/defendants' prayer for amendment of written statement is rejected.
2. Heard Mr. Mohit Bhansali, learned counsel for the respondents/plaintiffs. His contentions are, defendant Nos.1 and 2 are coming out with contradictory stands, even though they have filed common written statement. He would claim that once the common written statement is filed, the petitioner/ defendant No.2 cannot independently seek amendment of the written statement. He would further urge that test of due diligence is not satisfied by Petitioner as such court below was justified in rejecting the prayers.
3. I have appreciated the said submissions.
4. Both the defendants are before this Court in the form of petitioner Nos.1 and 2.
5. Apart from above, fact remains that it is not demonstrated as

to whether defendant Nos.1 and 2 have preferred separate written statements, as the same does not appear to be the case of the petitioners/defendants.

6. Considering the position of law that petitioners/ defendants can raise various defences in the written statement, it cannot be said that the defence of existence of agreement of sale dated 15th December, 2009 can't be raised. Though the Court below was justified in observing that trial in the suit has commenced, however, this Court is required to be sensitive to the fact that the plaintiff is in the witness box. As such Plaintiff / Respondent shall get appropriate opportunity to respond to the case of Petitioners.

7. That being so, the order impugned passed below Exh.30 on 25th February, 2021 by 4th Joint Civil Judge Senior Division is hereby quashed and set aside.

8. Said application Exh.30 stands allowed subject to payment of cost of Rs.10,000/- to be deposited in the Court below within two weeks from today.

9. The deposit of cost shall be condition precedent for carrying out amendment.

10. If the cost is not deposited, the order impugned shall govern the proceedings.

11. The petition stands allowed in above terms.

[NITIN W. SAMBRE, J.]