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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 10174 OF 2019**

Anjali Balasaheb Bongane

.... Petitioner.

V/s

Sopan Rama Pawar & Ors.

.... Respondents.

Mr. Rahul S. Kadam for the Petitioner.

Mr. Bhalchandra S. Shinde for Respondent No.1.

CORAM: NITIN W. SAMBRE, J.

DATE: MAY 02, 2022

P.C.:-

1] Exhibit-41 in Regular Civil Appeal No.118 of 2013 is moved by the Respondents/Plaintiffs, seeking amendment of Plaint which is allowed vide impugned order dated 9/4/2019. Suit came to be initiated by Respondents being Special Civil Suit No.81 of 2009 for setting aside Sale Deed dated 5/2/2008 for want of payment of total agreed consideration. Injunction is also sought not to interfere with possession of the Plaintiffs over the suit property. Suit came to be dismissed on 28/06/2013 against which Regular Civil Appeal No.118 of 2013 under the provisions of Section 96 of the Civil Procedure Code is pending adjudication before the learned District Judge. In the said

pending appeal, prayer is taken out by the Respondents/Plaintiffs for amendment of the Plaint, which is allowed by the order impugned, whereby prayer about refund of the amount is permitted to be incorporated.

2] Submissions of Counsel for the Petitioner are, Court below committed an error in passing the order in ignorance of provisions of Order II Rule 2 of the Civil Procedure Code, as very relief which is sought to be inserted by way of amendment was very much available on the date of filing of the suit. The next contention is, reasons which are considered for grant of amendment are not germane to the cause and merely because lawyer is changed amendment cannot be granted in lieu of absence of knowledge of law to the party. He further claims that amendment is granted merely for asking i.e. Respondents/Plaintiffs have failed to demonstrate due diligence on their part.

3] Counsel for Respondents would support the order impugned. According to him, cause as regards challenge to the Sale Deed dated

5/2/2008 was well within limitation and as such Court below can always grant such relief which is lesser than the one which is prayed before the Court below. He would as such urge that alternative prayer moved by the Respondents/Plaintiff is well within limitation. According to him, in the case in hand provisions of Order II Rule 2 will not apply. As such, relief which is ancillary to main relief claimed in the plaint can always be asked for or can be granted. As regards issue of due diligence is concerned, he would claim that failure of the lawyer in incorporating such claim in suit shall not be considered to be detrimental to the interest of the Respondents. As such, according to him, Petition is liable to be dismissed.

4] Considered submissions.

5] Originally suit claim is in relation to challenge to agreement dated 05/02/2008. The prayer further sought declaration that such agreement/Sale Deed is not binding on the Respondents/Plaintiffs and an injunction is sought not to interfere with the possession.

6] Suit on merit was dismissed in which a specific issue as regards payment to be received by the Plaintiffs was framed and answered in the negative. Respondents/Plaintiffs at appellate stage taken out application for amendment of plaint so as to incorporate the prayer for recovery of amount.

7] Admittedly, such prayer was not incorporated in 2009 when suit was brought into action. If such prayer is permitted to be incorporated at this stage, leave part applying principle of due diligence, even such claim will be barred by limitation and also under Order II Rule 2 of the CPC. Merely because Respondents/Plaintiffs were advised at appellate stage to incorporate such prayer by a lawyer cannot be a ground to infer that such prayer is required to be granted for the reason of ignorance of law by individual party. Parties since are not aware of the position of law, they take help of lawyers who are technical experts in the field and as such it cannot be said that plea was not available for relevant period.

8] That being so, order impugned, in my opinion, is not

sustainable. Application-Exhibit-41 stands rejected as the order impugned dated 9th April, 2019 is quashed and set aside.

9] Petition stands allowed in the aforesaid terms.

(NITIN W. SAMBRE, J.)