

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

**WRIT PETITION NO.13520 OF 2021**

**BANUBAI SHIVDAS PATIL  
VERSUS  
SONUBAI VASANT PATIL AND OTHERS**

...  
Advocate for Petitioner : Mr. Mohit Shah, Advocate h/f  
Mr. S.P. Brahme  
Advocate for Respondent No.1 : Mr. N.E. Deshmukh  
...

**CORAM : NITIN B. SURYAWANSHI, J.**

**DATE : 12<sup>th</sup> APRIL, 2023**

**PER COURT :**

1. Petitioner is aggrieved by the order dated 25/10/2021, passed by learned 5<sup>th</sup> Joint Civil Judge, Senior Division, Dhule, below Exhibit-98A, in Regular Civil Suit No.61/2015, thereby rejecting application filed by the petitioner under Order VI Rule 17 of the Code of Civil Procedure.
2. Petitioner/original plaintiff has filed suit for specific performance of agreement dated 14/03/1997 allegedly executed in favour of the plaintiff, by defendant No.1.
3. The suit was opposed by defendants by filing written statement. Trial Court rejected application Exhibit-5 filed by the plaintiff. Thereafter issues were framed. Plaintiff thereafter moved application Exhibit-98A for amendment of the plaint, which is rejected by the trial Court. Hence, the present petition.

4. Heard learned advocate for petitioner and learned advocate for respondent No.1. Perused the grounds raised in the petition, annexures thereto and the impugned order.

5. Amendment proposed by the petitioner is that, in place of 'defendant No.1 signed the agreement of sale' plaintiff seeks to substitute the words 'defendant No.1 put her thumb impression on the agreement of sale'. According to petitioner the same has occurred due to typographical mistake.

6. Admittedly, thumb impression of the executant appears on the agreement of sale dated 14/03/1997. Defendant No.1 has denied execution of the said agreement. Considering these peculiar facts, trial Court ought to have liberally allowed the amendment, so as to effectively adjudicate controversy between the parties. It is settled legal position that amendments are to be liberally allowed. It would avoid multiplicity of the proceedings. No serious prejudice is likely to be caused to the defendants, if the said amendment is allowed. For the lack of due diligence on the part of petitioner, the defendants can be compensated.

7. In that view of the matter, writ petition is allowed. The impugned order dated 25/10/2021, passed below Exhibit-98A in R.C.S. No.61/2015, is quashed and set aside. Application Exhibit-98A is allowed. Plaintiff shall pay cost of Rs.10,000/- to defendant

No.1 in the trial Court.

8. Plaintiff shall carry out amendment within a period of two weeks from the date of receipt of writ of this order. Defendants may file additional written statement to the amendment, within two weeks thereafter. The trial Court thereafter shall proceed with the suit, in accordance with law.

9. Considering the fact that suit is of the year 2015, trial is expedited.

**(NITIN B. SURYAWANSHI, J.)**