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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 12733 OF 2019

Soham Foundation Engineering Pvt. Ltd.
Through Vitthal Vasant Vaishampayan .. Petitioner

Versus

Nirman Associates, Promoters and Builders
Through Proprietor Sameer Ramesh Sawant .. Respondent

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- Mr. Aniket P. Ranade, Advocate for Petitioner.
 - None for Respondent.

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CORAM : MILIND N. JADHAV, J.

DATE : JANUARY 04, 2023.

P.C.:

- 1.** Heard Mr. Ranade, learned Advocate for the Petitioner.
- 2.** Petitioner is Original Defendant and Respondent is Original Plaintiff in the present case.
- 3.** Today, none appears for Respondent. Record indicates that on several occasions none appeared for Respondent before this Court. However, hearing of the Writ Petition cannot be protracted any further.
- 4.** Perused the impugned order dated 21.06.2019 passed by the learned 2nd Joint Civil Judge Junior Division, Ratnagiri (for short “**Trial Court**”) below Exhibit-29 in Regular Civil Suit No.241 of 2013. Plaintiff has filed Application under Order VI Rule 17 of the Civil Procedure Code, 1908 (for short “**CPC**”) seeking amendment to the

Plaint on the ground that there was a typographical error in disclosing the name of Plaintiff i.e. Sameer Ramesh Sawant as Proprietor of Nirman Associates, Promoters and Builders which was the Plaintiff's firm who had filed the original Suit.

5. Perusal of Plaintiff reveals that the name of Plaintiff is shown as Sameer Ramesh Sawant, Proprietor of Nirman Associates, Promoters and Builders. So also, the verification clause depicts the same nomenclature. The notice issued by the Advocate on 27.07.2013 prior to the filing of the Plaintiff which is annexed as Exhibit-5/3 at page No.25 of the Writ Petition also depicts the name of Plaintiff as Shri. Sameer Ramesh Sawant, Proprietor of Nirman Associates, Promoters and Builders.

6. By Application filed below Exhibit-29, it is contended by Plaintiff that the said reference to Sameer Ramesh Sawant is incorrect and has arisen out of a typographical mistake and hence substitution of the name of Sonali Sawant in the capacity of Proprietor of Plaintiff firm has been sought. Application is based on two grounds namely that Sonali Sawant is the actual Proprietor of the Plaintiff firm and that she has in fact issued a Power of Attorney dated 19.07.2006 in favour of Sameer Ramesh Sawant.

7. Mr. Ranade, learned Advocate has taken me through the record of the pleadings of the case which clearly reveal that all transactions right from inception i.e. the contract and work order

issued in favour of Defendant were in fact negotiated and carried out by Sameer Ramesh Sawant only as Proprietor of Nirman Associates, Promoters and Builders.

8. Mr. Ranade would submit that the trial has already commenced and the same has also been recorded by the learned Trial Court in paragraph No.10 of the impugned order.

9. In that view of the matter, the amended provisions of Order VI Rule 17 of the CPC and more specifically the proviso thereto would apply and seeking a prayer for amendment of such a nature cannot be allowed. *Prima facie* it is seen that the amendment sought for by Plaintiff if allowed by the learned Trial Court by the impugned order strikes at the root of the claim filed by the original Plaintiff in the Suit.

10. The impugned order is wholly unsustainable and deserves to be set aside. The impugned order dated 21.06.2019 is thus quashed and set aside.

11. Writ Petition stands allowed in terms of prayer clause 'b' which reads thus:-

"b. To quash and set aside the impugned judgment and order dated 21.06.2019 passed by Ld. 2nd Joint CJJD, Ratnagiri below exhibit 29 in RCS 241 of 2013."

12. Writ Petition is disposed.

[MILIND N. JADHAV, J.]