

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.12572 OF 2022

Dhanajirao Shivajirao Patil

.... Petitioner

versus

Shubhangi Sachin Thorat

.... Respondent

.....

- Mr. Umesh Mankapure i/b. Rati s. Shinhasane, Advocate for Petitioner.

CORAM : SARANG V. KOTWAL, J.

DATE : 21st APRIL 2023

P.C. :

1. The Petitioner is challenging the order dated 25/01/2022 passed in Special Civil Suit No.147/2011 below Ex.109 passed by the 3rd Joint Civil Judge, Senior Division, Sangli. The Petitioner is the Original Plaintiff and the Respondent is the Original Defendant.

2. Heard Mr. Umesh Mankapure, learned counsel for the Petitioner.

3. The plaint was filed in the year 2011 by the Petitioner. It was filed on 02/05/2011 for specific performance of the agreement dated 27/07/2010. It is mentioned in the plaint that the Petitioner had paid Rs.15 lakhs out of Rs.25 lakhs to the Respondents. The pleading in the plaint is that the details of such payment by cheques was mentioned in the agreement for sale. After filing of the plaint, Written Statement was filed by the Respondent/Defendant on 18/04/2012 vide Ex.29. The issues were framed and the Plaintiff/Petitioner adduced his evidence on 22/02/2013. There was cross-examination by the Respondent/Defendant and it was denied that the payment was received by the Defendant. After that, the suit proceeded for quite a number of years and the Plaintiff closed his evidence. After that, even the Defendant closed her evidence on 08/01/2020. After that, the Plaintiff/Petitioner made an application on 17/02/2020 for permission to adduce the additional evidence. That application was also rejected and the suit was listed for final arguments on 04/02/2021. After all these the Petitioner/Plaintiff filed an application on 04/02/2021

for amendment to the plaint under Order VI Rule 17 of CPC to explain as to in whose names the cheques were issued. This application was rejected by the impugned order dated 25/01/2022 by the learned Trial Judge.

4. Learned counsel for the Petitioner submitted that if the amendment is allowed, it will not change the nature of the suit. He submitted that the Petitioner is only giving the details of the cheques which are already mentioned in the agreement for sale. The pleading in the plaint refers to the agreement for sale and therefore the Petitioner was not introducing something new in the suit proceeding. Therefore, no prejudice would be caused to the Defendant. He submitted that the Petitioner is serving in the Army and he visits his village only twice in a year and therefore he was not able to make such application earlier.

5. I have considered these submissions and I have perused the impugned order. As it is evident from the record that this application was made when the trial was posted for final arguments. The examination of the Petitioner was over in the

year 2013 itself. Even the cross-examination was over in that year. Thereafter for a period of more than 7 years he did not deem it necessary to make an application for amendment to the plaint. It is quite apparent that after cross-examination of the Plaintiff, this aspect of not mentioning the names of the payees in that plaint, was already highlighted. It is not acceptable that the Plaintiff was not aware in whose names the cheques were issued. The Petitioner was quite aware of these facts and there was no reason as to why the said facts were not mentioned in the plaint itself. These are not the facts which have come to his knowledge subsequently. Even otherwise after the evidence was closed and the suit was kept for final arguments, at a belated stage, this application was made. It was made more than 7 years after the Petitioner's examination and cross-examination was over. That can hardly be described as due diligence on his part. The learned Judge has considered all these aspects in the proper perspective. I do not see any reason to interfere with the well reasoned order of the learned Judge. Consequently, I do not find merits in the Petition. The Petition is dismissed.

6. Learned counsel for the Petitioner prays that the observations be made that the Trial Court shall not be influenced by rejection of this Petition.

7. It is quite obvious that the Trial Judge will have to consider and decide the suit on its own merits.

(SARANG V. KOTWAL, J.)