

SA Pathan

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

WRIT PETITION NO.11319 OF 2023

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Vasant Yashwant Pawar (Deceased)

Through Legal Heirs & Anr.

... Petitioners

V/s.

Manikrao Yashwant Pawar & Ors.

... Respondents

Mr. Nikhil Wadikar a/w Mr. Pradip Zende a/w Mr. Malhar
Pawar a/w Ms. Shweta Pandey, for the Petitioner.

CORAM : AMIT BORKAR, J.

DATED : SEPTEMBER 13, 2023

PC.:

1. Challenge in this writ petition is at the instance of defendant Nos.1 & 2 in a suit for partition where co-defendant filed an application for amending that the written statement seeking withdrawal paragraphs 1 to 15 of his written statement to substitute them by new paragraphs.

2. Defendant Nos.1 & 2 are challenging the said order on the ground that such withdrawal affects vested rights of defendant No.1. According to him, by way of paragraphs which were withdrawn, the concerned defendant i.e. defendant No.3 contested plaintiffs claim and supported defendant Nos.1 & 2's defence. Apart from the said contentions, defendant No.3 has made allegations against defendant No.1 that the earlier written statement was got signed by defendant

Nos.1 & 2 by misrepresentation. According to defendant Nos.1 & 2, the Trial Court could not have allowed such amendment to written statement.

3. Whether the exercise of power by the Court to allow withdrawal of paragraphs 1 to 15 from written statement was proper or not needs to be decided at the instance of party who has locus to file such petition or is aggrieved by the impugned order.

4. It is well settled that Writ of Certiorari can be issued at the instance of person aggrieved by the order; a person can be termed as aggrieved only if his legal rights are affected or his legal rights are taken away.

5. In the facts of the case, the petitioner has failed to demonstrate his legal rights accrued are taken away and / or his legal rights are affected.

6. In a suit for partition though every party is plaintiff and defendant, the said principle applies in different context. In relation to challenge to order of allowing amendment, unless co-defendant satisfies that such amendment has taken away rights conferred on him or accrued rights, he has no right to challenge such order. Therefore, the writ petition challenging impugned order cannot be entertained at the instance of defendant Nos.1 & 2.

7. The writ petition is, therefore, dismissed. No costs.

(AMIT BORKAR, J.)