

SA Pathan

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

WRIT PETITION NO.12014 OF 2019

Aktar Budan Fakir (Shah)
Through Power of Attorney (Petitioner
No.3-Altat Budan Shah (Fakir)) & Ors. ... Petitioners
V/s.
Balasaheb Baburao Wagh ... Respondent

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Ms. Rachana Harpale h/f Mr. Sagar Kasar, for the
Petitioner.

Mr. Sanjay P Shinde, for the Respondent.

CORAM : AMIT BORKAR, J.

DATED : AUGUST 29, 2023

P.C.:

1. By this petition under Article 227 of the Constitution of India, the petitioner (original defendant) is challenging order of rejecting amendment to counter claim.

2. By way of amendment relief of declaration in relation to documents executed in the year 2001, 2002 and 2007 was sought in the year 2018.

3. The plaint indicates execution of all three documents in the year 2009. The petitioner filed written statement in the said suit in the year 2009. Therefore, the petitioner had knowledge of all three documents at least in the year 2009.

4. Article 59 of the Indian Limitation Act, 1908 governs the situation. The period of limitation start running from the date of knowledge of the documents. Based on written statement of the petitioner, the knowledge needs to be attributed to the petitioner in the year 2002. Therefore, test has been laid down by the Apex Court in the case of **Pirgonda Hongonda Patil vs Kalgonda Shidgonda Patil & Ors.**, reported in 1957 AIR SC 363, 1957 SCR 595, it is explained the test is whether a party is entitled to file a suit on the date of filing of amendment application.

5. Applying the said test, the amendment to counter claim sought by the petitioner is *ex-facie* barred by the Limitation act, 1908. Therefore, no interference under Article 227 of the Constitution of India.

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

(AMIT BORKAR, J.)