

Nikita

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

**WRIT PETITION NO.8102 OF 2010
WITH
INTERIM APPLICATION NO.14651 OF 2023
IN
WRIT PETITION NO.8102 OF 2010**

VAIBHAV
RAMESH
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Vijaya Ravindra Kshatriya ... Petitioner

V/s.

Karbhari Shankar Shinde and Anr. ... Respondents

Mr. Ashok B. Tajane a/w Mr. Yuvraj A. Tajane a/w Mr.
Balaji P. Shinde i/b Mrs. Kavita P. Shinde, for the
Petitioner.

Mr. Vaibhav D. Kadam a/w Mr. Yash G. Fadtare a/w Ms.
Jidnyasa Chaudhari i/b Mr. Adityaraj Gaikwad for
Respondent No.2.

CORAM : AMIT BORKAR, J.

DATED : OCTOBER 16, 2023

P.C.:

1. By this petition, under Article 227 of Constitution of India, the petitioner/original plaintiff who filed the suit for specific performance, filed an application for amendment of plaint before commencement of the Trial. By way of amendment, the plaintiff proposed amendment contending that out of Rs.3,00,000/- paid to the defendant, Rs.2,66,000/- were paid in cash, Rs.34,000/- was paid in cheque. The amount of cheque was withdrawn in cash. With the result, entire amount of Rs.3,00,000/- withdrawn in cash.

2. The Trial Court rejected the amendment on the ground that it is consistent case of the plaintiff that Rs.3,00,000/- was paid in cash, however by proposed amendment plaintiff intends to change the stand to incorporate Rs.34,000/- by way of cheque. The Trial Court, therefore, held that the proposed amendment is inconsistent with original pleadings.

3. However, perusal of paragraph No.5, of the plaint, it appears that the plaintiff pleaded payment of Rs.3,00,000/- by cash. In the proposed amendment, manner of payment of cash is explained by stating that Rs.2,66,000/- was paid in cash and Rs.34,000/- was paid in cheque. The amount of cheque was withdrawn in cash.

4. Therefore, in my opinion, the proposed amendment could not have been rejected by the Trial Court on the ground that it is inconsistent. In my opinion, the proposed amendment explains the details of consideration and manner of payment. Hence the Trial Court ought to have allow the application for amendment particularly when the application was filed before the commencement of the Trial.

5. Hence following order:

a) The impugned order dated 7th July 2010, passed by Third Joint Civil Judge Senior Division Nashik in Special Civil Suit No.177 of 2007, is set aside to the extent it rejects amendment in paragraph No.5 of the plaint.

b) The application below Exhibit-47 in Special Civil Suit

No.177 of 2007 is allowed to the extent of paragraph No.5 of the plaint.

6. The writ petition stands disposed of.

(AMIT BORKAR, J.)