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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

952 WRIT PETITION NO. 3462 OF 2019

1. Shri Subhash GopalDas Gujrati,
Age 61 years, Occ.Agri.,
R/o. Panchaleshwar Galli, Chopda,
Tal.Chopda, Dist.Jalgaon.

2. Smt.Shakuntalabai Ramesh Gujrati,
Age 60 years, Occ. Household,
R/o. As above.

.. PETITIONERS

VERSUS

1. Shri. Rajendra Appa Patil,
Age 51 years, Occ.Agri & Business,
R/o. Gujrati Galli, Chopda,
Tal. Chopda, Dist. Jalgaon.

2. Smt.Vandana Dattatraya Vaidya,
Age 64 years, Occ. Pensioner,

3. Nilesh Dattatraya Vaidya,
Age 34 years, Occ. Labour,
Both R/o Shri RSD-207,
Near Bhumiputra Model College,
In front of Uttarpradesh Bhavanaya,
Chinchpada Road, Kalyan (East).

4. Swati Dattatraya Vaidya @
Sau. Swati Sujit Upasani,
Age 41 years, Occ. Household,
R/o. D-201, Gangadham-2,
Sukapur, New Panvel.

5. Priti Dattatraya Vaidya
@ Sau. Priti Ashutosh Pandit,
Age 32 years, Occ. Household,
R/o. Yugant, A-62, Room No.9,
Near Ganpati Temple, Sukapur,
New Panvel.

.. RESPONDENTS

...
Mrs.A.S.Jadhav, Advocate holding for Mr.PR.Katneshwarkar,
Advocate for the petitioners.

Mr.M.M.Bhokarikar, Advocate for the respondent no.1.

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CORAM : ARUN R. PEDNEKER, J.

RESERVED ON : 27th FEBRUARY, 2024

PRONOUNCED ON : 13th JUNE, 2024

JUDGMENT :

1] Rule. Rule made returnable forthwith with the consent of the parties heard finally.

2] The petitioners are challenging the order dated 21.12.2018 passed by the Civil Judge Senior Division, Amalner below Exh.97 in Special Civil Suit No.9/2016, dismissing the application filed by the defendant Nos. 5 and 6 to file written statement to the amended plaint.

3] Brief facts of the case are as under:-

4] Plaintiff filed a Special Civil Suit No.09/2016 for specific performance of contract against defendant Nos.1 to 4. However, there was apprehension that defendant Nos. 1 to 4 may transfer the suit property to defendant Nos. 5 and 6 as such defendant nos. 5 and 6 were also made parties to the suit. In the said suit defendant Nos. 5 and 6 did not file written statement as such no written statement order was passed against defendant Nos. 5 and 6. Thereafter defendant No. 5 filed an application for setting aside no w.s. order, which was also rejected on 20.02.2018 Exh.74. Meanwhile, the plaintiff moved an application for amendment of the plaint. In the application, the plaintiff contended that suit property is transferred to defendant Nos. 5 and 6 by sale deed dated 08-11-2016 and prayed for amendment of the plaint and for cancellation of the sale deed dated 08.11.2016 which was executed during the pendency of the suit. In view of the subsequent events that occurred the court permitted to the plaintiff to amend the plaint. The plaintiff in pursuance of the order passed, amended the plaint and on 05-10-2018 copy of amended plaint was served on

the defendant. As such defendant Nos.5 and 6 made an application at Exh.97 on 13.11.2018 praying for filing written statement. Same is rejected on account of facts that there was no written statement order passed against defendant No.5. Thereafter, application moved by defendant No.5 at Exh.74 setting aside no w.s. written statement was also rejected. The order dated 21.12.2018 below Exh.97 passed by the learned Civil Judge Senior Division, Amalner is challenged in the present petition.

5] The learned counsel for the petitioners contend that for the first time in the amended plaint prayer is made against the defendant nos. 5 and 6. As such there was no cause for defendant Nos. 5 and 6 to file written statement before amendment of the plaint. It is only after the plaint was amended that prayer was made against defendant Nos. 5 and 6 and as such an application is moved to file written statement to the amended plaint by defendant nos. 5 and 6. The learned counsel for the petitioners would submit that she would file statement only to the extent of amended plaint.

6] *Per contra* learned counsel appearing for the respondents - plaintiffs submits that defendant Nos. 5 and 6 have been given ample opportunities to file written statement and that even the application filed for w.s. to the amended plaint is filed after considerable time lapse. The learned counsel further submits that the defendant Nos. 5 and 6 ought to have applied to the court at earlier point of time to file their written statement to the amended plaint.

7] Heard the rival submissions of the parties. The suit is filed for specific performance of the contract and relief was claimed in the suit only against defendant nos.1 to 4 and that there was apprehension that the suit property would be transferred to the defendant nos. 5 and 6 as such they were made party to the suit. However, during pendency of the proceedings before the civil Court, the suit property was transferred to defendant nos. 5 and 6 as such an application for amendment was made and same was allowed by the trial court and necessary amendment was carried out in the plaint and

amended copy of the plaint was served on the defendant on 05.10.2018. On 13.11.2018, the petitioners original defendant nos. 5 and 6 made application praying to file written statement to the plaint as the prayer against the defendant nos. 5 and 6 were made for the first time in the application made on 18.04.2017 and the amendment was carried out and served on the defendant nos. 5 and 6 on 05.10.2018.

8] In the instant case, no w.s. order was passed against the defendant nos. 5 and 6 on 18.11.2016 and application to set aside no w.s. order at Exh.74 was also dismissed on 20th February, 2018. Prayer was made against the defendant nos. 5 and 6 for the first time in 2017 and copy of the amended plaint was served on the defendant nos. 5 and 6 on 05.10.2018. As there was no prayer against defendant nos. 5 and 6, there was no occasion for the defendant nos. 5 and 6 to file written statement prior to the amendment of the plaint. Since the amendment is carried out in the plaint thereby prayers are made against defendant nos. 5 and 6 and also transfer made to defendant nos. 5 and 6 is also challenged by the amendment in

plaint. The defendant nos. 5 and 6 is thus entitled to file written statement and to defend the suit. In the interest of justice in order to defend the amended plaint, the defendant nos. 5 and 6 are permitted to file written statement within a period of 14 days from the date of uploading the order of this Court.

9] In view of the same, the present writ petition is allowed and rule is made absolute in above terms. In view of the disposal of the writ petition, pending civil application, if any, also stands disposed of.

[ARUN R. PEDNEKER, J.]

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