



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

12 WRIT PETITION NO. 9694 OF 2024

MANNISHA BALKRUSHNA KODE

VERSUS

**MANDANLAL UTTAMCHAND DESARDA THROUGH G. P. A.
ANURAG DEVENDRA DESARDA**

...

AND

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MANNISHA BALKRUSHNA KODE

VERSUS

**MANDANLAL UTTAMCHAND DESARDA THROUGH G. P. A.
ANURAG DEVENDRA DESARDA**

...

Advocate for the Petitioner : Mr. Kulkarni Sanket S.

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CORAM : R. M. JOSHI, J.

Dated : December 02, 2024

PER COURT :-

1. These petitions take exception to orders passed below exhibit 46 and 52, respectively in Special Civil Suit No. 1186/2022 passed by CJSD, Aurangabad, whereby, applications filed by respondent / plaintiff for amendment to the prayer clause as well as to the pleading came to be allowed.

2. The facts as they have been revealed from the record indicate that the suit is filed for specific performance of contract on the basis of agreement to sale dated 07.05.2022 in respect of the suit property. The petitioner/defendant filed reply to exhibit 5, contending that the defendant has already terminated the agreement to sale and since there is no challenge thereto, the plaintiff is not entitled for any relief. The exhibit 5 came to be allowed. After about a year therefrom, first

application for amendment i.e. exhibit 46 came to be filed for amendment to the prayer clause. After say was filed by the defendant to this application, another application i.e. exhibit 52 came to be filed three months thereafter. Both applications are allowed. Hence, this petition.

3. Learned counsel for the petitioner submits that merely because in the reply the defendant has put forth his case to the effect of termination of the agreement to sale and has also pointed out the legal position relying upon the judgment of the Hon'ble Supreme Court in case of *I.S. Sikandar (Dead) by LRS. Versus K. Subramani and Others*, **(2013) 15 SCC 27**, no right is vested in the plaintiff to seek amendment for the pleadings. It is his submission that the approach of the plaintiff is so casual that after the filing of reply to exhibit 5 no application for amendment was moved for about the year and even thereafter, application was moved but for amendment to the prayer only, without pleadings. It is after the reply is filed to this application by the defendant, application exhibit 52 is moved. It is the contention of the counsel for the petitioner that irreparable loss would be caused to the petitioner if the applications are allowed and that the parties cannot be permitted to abuse process of law in such manner. Finally he further argued that the amended application is filed after framing of the issues and as such due diligence was required to be shown by the plaintiff, which is not pleaded or proved.

5. There cannot be any dispute about the fact that the amendment sought by the plaintiff to the plaint as well as to the prayer clause are absolutely relevant for the decision of the suit. Once defendant claims that there is a termination of the agreement to sale, in absence of specific challenge thereto, the correctness or otherwise of the said termination could not have been gone into. No doubt, the application is filed after framing of issues. However, since the parties have not lead

any evidence, no prejudice is likely to be caused by permitting plaintiff to amend plaint. However, such application could be allowed by imposing costs. Perusal of the impugned orders show that learned trial Court has imposed costs while allowing both applications. This Court is of considered view that the defendant herein is not put into irreversible position by allowing the applications of amendment.

6. Though the learned counsel for the petitioner is justified in making grievance as to the manner in which the applications are filed, it is a common knowledge that on the basis of advice of the lawyer applications are moved and for the fault of the lawyer, a party cannot be made to suffer.

7. In view of above, no case made out to cause any interference in the impugned order. As a result, petition stands dismissed.

(R. M. JOSHI, J.)