



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

924 WRIT PETITION NO. 12143 OF 2023

Dr Prashant Subhash Somani & another .. Petitioners

VERSUS

Manisha Nitin Kabra
Alias Manisha Babulalji Mantri & othersRespondents

.....

Mr. B. A. Darak, Advocate for the Petitioners.
Mr. R. R. Kazi, Advocate holding for Mr. P. R. Katneshwarkar,
Advocate for Respondent Nos. 1, 4 to 6.

CORAM : R. M. JOSHI, J.

DATE :20th JULY, 2024.

PER COURT :

1. This Petition takes exception to the order dated 24.08.2023 passed in Special Civil Suit No. 793/2012 wherein the application filed by Defendant Nos. 6 and 7 for amendment to the written statement is rejected.

2. Record indicates that though the suit came to be filed in the year 2012, Petitioners i.e. original Defendant Nos. 6 and 7 were added as Defendants on 29.10.2020. Thereafter, these Defendants filed written statement on 30.08.2021. Correction Deed was

executed on 14.01.2020 and thereafter additional written statement is filed on 11.01.2022.

3. After conclusion of the evidence of Plaintiffs, Defendant No. 6 examined herself. Thereafter an application came to be filed for seeking amendment to the written statement on the ground that inadvertently the mode of payment of consideration to the vendor was not correctly described. Hence, appropriate correction is sought in this regard by amendment to written statement.

4. Trial Court rejected the application on the ground that the application is filed at belated stage so also in view of the fact that the mode of payment was well within the knowledge of these Defendants. This Court finds that the Trial Court was more influenced with the fact that the suit is pending since 2012 and has been expedited by this Court, rather than consideration of the application on merits.

5. There cannot be any dispute made with regard to the position of law that amendment which is absolutely necessary for decision of the issue involved in the proceeding needs to be allowed.

This is a case wherein there is document on record indicating the mode of payment of consideration by the Defendants to their vendors. In such circumstances, there is reason to believe that it is only out of inadvertence the same is wrongly recorded in the written statement. Having regard to this fact, this Court is of the considered view that such amendment which is not likely to cause any prejudice to the other side ought to have been allowed by the Trial Court. However, considering the stage at which amendment is sought, Plaintiffs are required to be compensated as some inconvenience certainly caused to them.

6. In view of above discussion, Petition is allowed. Application Exhibit 417 stands allowed subject to payment of cost of Rs. 15,000/- to be paid by the Petitioners to the Respondents/Plaintiffs. Amendment be carried out on the next date of hearing before the Trial Court. Trial Court to ensure that cost is paid to Plaintiffs before permitting these Defendants to carry out amendment.

(R. M. JOSHI)
Judge