

HARSHADA H. SAWANT
(P.A.)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.35 OF 2024

Adnan Shaukat Attar and Anr.

Petitioners
.. (Orig. Plaintiffs)

Versus

Rekha Vishalsingh Rajput

Respondent
.. (Org. Defendant)

-
- Mr. Anant Vadgaonkar, Advocate for Petitioners.
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CORAM : MILIND N. JADHAV, J.

DATE : JANUARY 10, 2024

P.C.:

- 1.** Heard Mr. Vadgaonkar, learned Advocate for Petitioners.
- 2.** The impugned order is at Exhibit-F passed in Application filed below Exhibit-35 by the learned Trial Court allowing amendment to the application filed by the Defendant in the suit proceedings under Order VI Rule 17 of the Civil Procedure Code, 1908 (for short 'CPC').
- 3.** At the outset, Mr. Vadgaonkar would submit that the Application seeking amendment was filed after completion of cross-examination of the Plaintiffs and despite pointed questions being asked with respect to the transaction in during cross-examination of witness of the the Plaintiffs, the learned Trial Court without cosidering the same has permitted the Defendant to now amend the written statement to delete her role in the transaction and in her place allowed her to substitute the name of her father as having been

involved in the transaction with the Plaintiffs.

4. Mr. Vadgaonkar has drawn my attention to Exhibit-D application filed below Order VI Rule 17 of the CPC and more specifically paragraph Nos.3 and 4 which refer to the amendment sought for by the Defendant to the written statement.

5. At the outset, it is seen that such an amendment would undoubtedly challenge the entire defence which was pleaded by the Defendant when it was specifically alleged by the Plaintiffs that the transaction was with her and not with her father in the first place. Secondly, such amendment if allowed after the witness action of the Plaintiffs is over would require very strong reasons and consideration. I find that the impugned order is completely overlooked the above issues and is devoid of any such reasons. The only reason stated in the impugned order is that Defendant has realised subsequently that the transaction had taken place between the Plaintiff and her father and not herself. It could have been understood if such an amendment was required to be effected at one place only but all along in the written statement the Defendant has clearly stated that the transaction had taken place between the Plaintiff and herself.

6. An arguable case has therefore been made out by Mr. Vadgaonkar for issuance of notice and stay of the impugned order.

7. Hence, issue notice to Respondent. Petitioners are directed

to serve the Respondent. Humdast permitted. In addition to Court's notice, Petitioners are permitted to serve Respondent and inform her about the next date of hearing by any permissible mode of service and file appropriate affidavit of service with tangible proof thereof. Respondent is directed to file Affidavit-in-Reply to the Writ Petition.

8. The impugned order dated 27.09.2022 stands stayed in the meanwhile.

9. It is directed that Respondent should remain present through herself or by Advocate on the next date. It is clarified that if Respondent does not remain present on the next date this Court shall proceed with further hearing of the Writ Petition and pass appropriate orders after hearing Petitioners on the next adjourned date.

10. Stand over to **29th January, 2024.**

H. H. SAWANT

[MILIND N. JADHAV, J.]

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