

Amberkar

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 910 OF 2024

Sham Baburao Kandekar

.. Petitioner

Versus

Ulka Vitthalrao Bahirat & Ors.

.. Respondents

-
- Mr. Sandeep Phatak a/w Adhik Kadam for Petitioner
 - Mr. A.S. Kalekar i/by Mr. Jaydeep Deo for Respondent Nos. 1 and 2
-

CORAM : MILIND N. JADHAV, J.

DATE : JANUARY 23, 2024

P. C.:

1. Heard Mr. Phatak, learned Advocate for Petitioner and Mr. Kalekar, learned Advocate for Respondent Nos. 1 and 2.

2. By a comprehensive Judgment dated 19.11.2015, Spl. Civil Suit No. 184/2009 was dismissed. Civil Appeal No. 309 of 2016 was filed against the said Judgment. At the outset, Mr. Phatak would inform the Court that the amendment application to the Memo of Appeal was filed by the Appellants but the same was rejected. The said order is at page No. 114 of the Petition. He would next submit that subsequent thereto under Exh. 29, Appellants filed Application for seeking amendment of the suit plaint. Apart from the fact that this amendment application was filed after 16 years, by virtue of the said amendment, substantive rights *inter se* between the parties regarding

possession of the suit property were sought to be introduced in the pleadings. This is reflected from paragraph No.3 of the impugned order. Learned Appellate Court on the specious ground that the said amendment is a subsequent event has allowed the Application. That apart production of further documents with respect to the amendment has also been allowed.

3. Mr. Phatak would submit that the statements which are noted and reflected in paragraph No. 4 of the impugned order concern a further application regarding production of documents sought for by virtue of the Application filed under Exh. 29 of which a separate list was enclosed. He would submit that though the operative clause (b) of paragraph No. 5 of the order dated 14.09.2023 states that production of documents listed with the separate list be allowed and the same be read in evidence, he has instructions to submit that the said Application is yet to be heard by the Appellate Court.

4. Mr. Kalekar, learned Advocate appears for the contesting Respondents. He would submit that he has received instructions from Advocate Mr. Jaydeep Deo to appear and on instructions would submit that Respondents have given instructions to Mr. Deo to appear in the matter and represent them today morning only. He would submit that apart from the instructions, copy of the Writ Petition has also not been received from the Respondents and hence, he seeks some

accommodation from the Court. Mr. Phatak would contend that copy of the Writ Petition has been served on the Respondents.

5. Respondents are directed to file affidavit-in-reply, if so desired. It is made clear that this Writ Petition shall be heard and disposed of at the stage of admission on the next adjourned date.

6. At the request of Mr. Kalekar, stand over to **6th February, 2024.**

Amberkar

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[MILIND N. JADHAV, J.]