

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.18933 OF 2024

SATISH
RAMCHANDRA
SANGAR

Smt.Shashikala Sriram Shetty

...Petitioner

V/s.

Jagannath Honnaya Shetty (Deceased)

Nikita Jagannath Shetty and Ors.

...Respondents

Mr.S.C.Wakankar a/w Ms.Aishwarya Bapat:-

Advocates for Petitioner.

CORAM : S. M. MODAK, J.

DATE : 19th DECEMBER 2024

P. C. :-

1. Considering the fact, that the trial Court has fixed the suit on 20th December 2024 for dismissal, on *praecipe* moved on behalf of the Petitioner-Plaintiff, this matter is taken on board.
2. Heard learned Advocate for the Petitioner.
3. The trial Court allowed the amendment in the written statement sought by Defendant No.2. This is challenged by the Plaintiff by way of Writ Petition. Yet, notice is not issued.
4. Issue notice to Respondent Nos.1 to 6 returnable on **4th February 2025**. Private notice, in addition, is allowed. Affidavit of service be filed.

Satish Sangar

5. I have read the copy of roznama dated 17th December 2024. The roznama reads thus:-

- (a) The Court has passed an order on Exhibit-19. This Application moved on behalf of Defendant Nos.2 to 6 requesting for direction against the Defendant No.7 to cross-examine the Plaintiff earlier to their cross-examination. This was partly allowed. The said order is not under challenge.
- (b) Exhibit-105 was an Application for appointment of Court Commissioner for recording the evidence filed by the Plaintiff. It was dismissed. The said order is not under challenges.
- (c) On this background, the trial Court directed the Plaintiff to remain present and give evidence, otherwise the suit will be dismissed on 20th December 2024.

6. According to learned Advocate Shri.Wakankar:-

- (a) Already, an Affidavit of evidence was filed and there is an additional Affidavit also.
- (b) If, the Plaintiff will fail in this Writ Petition, challenging the amendment in the written statement, in that eventuality, he may file one more additional Affidavit explaining the particulars sought to be incorporated by amendment.
- (c) However, this cannot be done because the said order is under challenge.

7. He is correct. On the set of the facts mentioned above, in no

eventuality, the trial Court can dismiss the suit. Because, the Plaintiff may file one more additional Affidavit or not, still his two Affidavits are there on record. The Plaintiff enter into witness box for further examination-in-chief. According to Mr.Wakankar, the hearing of the suit is expedited by this Court. Be that it may, today, it is clarified that the trial Court cannot dismiss the suit. At the most, suit may proceed to further stage.

8. In view of that, stand over to **4th February 2025.**
9. Parties to act on an authenticated copy of this order.

[S. M. MODAK, J.]