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

WRIT PETITION NO.11454 OF 2023

1. Shri Karbhari Waman Kudnar,
   Age: 72 years, Occu: Retired
   R/o. Plot No.51B, Behind Devi Mandir,
   Nirmal Nagar, Ahmednagar 414001
2. Sou. Sushila Karbhari Kudanar,
   Age: 62 years, Occu: Household,
   R/o. Plot No.51B, Behind Devi Mandir,
   Nirmal Nagar, Ahmednagar 414001 **....PETITIONER**
   (Orig. Defendants)

VERSUS

Shri Renukamata Multi-State Co-op. Urban
Credit Society Limited, Ahmednagar,
Main branch, Renuka Bhavan Pipeline Road,
Ahmednagar through its representatives.
Mr. Harishchandra Ambadas More,
Age: 50 years, Occu: Service R/o. Renuka
Bhavan, Ekvira Chowk, Pipeline Road,
Savedi, Ahmednagar **….RESPONDENT**
(Orig. Plaintiff)

….

Mr. R. F. Totala, a/w Mr. V. S. Kabra h/for Mr. S. V. Lohiya, Advocate for petitioners
Mr. L. B. Palod, Advocate for respondent

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CORAM : S. G. CHAPALGAONKAR, J.
RESERVED ON 21.07.2025
PRONOUNCED ON : 29.07.2025

JUDGMENT :-

1. **Rule**. Rule made returnable forthwith, heard finally by consent of parties.

2. The petitioners/original defendants impugns order dated 12.07.2023 passed by learned Civil Judge Senior Division, Ahmednagar

in Regular Civil Suit No.01 of 2022, whereby petitioners' prayer seeking amendment in written statement has been rejected. (Hereinafter parties are referred by their original status for the sake of convenience and brevity)

3. The R.C.S. No.01 of 2022 has been instituted by respondent-Bank seeking relief of possession of suit house and recovery of rent amount of Rs.4,40,000/- from petitioners / defendants.

4. Plaintiff-Bank contends that it purchased suit house vide registered sale deed dated 02.11.2019. The name of Bank has been mutated in record of rights. Later on, defendants requested for continuation of their possession on rent basis so also agreed to execute lease agreement. However, they failed to do so and also refused to pay rent and deliver possession to plaintiff.

5. Defendants appeared in suit, filed written statement and admitted having obtained loan of Rs.25,00,000/- (Rs. Twenty Five Lac) from plaintiff-Bank and mortgaged suit property by way of security. Defendants further contends that initially they deposited loan installments; however, because of huge business losses, they could not deposit installments and compromised with plaintiff-Bank. As per compromise, they sold out suit property to plaintiff-Bank, but plaintiff-Bank failed to issue 'No Objection Certificate' as already defendants have specifically denied plaintiff's theory of lease agreement. In last paragraph of written

statement, it is contended that if plaintiff issues No Objection Certificate, defendants are ready to handover possession.

6. Pursuant to pleadings of parties, learned Trial Court framed issues. At this stage, defendants filed application seeking amendment in written statement. In paragraph Nos.5 and 6, defendants seek to replace figure of loan amount of Rs.25,00,000/- (Rs. Twenty Five Lac only) with Rs.16,00,000/- (Rs. Sixteen Lac only). Similarly, they want to introduce contention that they were induced to execute sale deed of suit property in favour of plaintiff-Bank, or subjected to fraud and misrepresentation. The aforesaid amendment was opposed by plaintiff. Learned Trial Court rejected defendant's application vide impugned order dated 12.07.2023, observing that allowing amendment would result into withdrawal of admissions in written statement and introduction of entirely new case.

7. Mr. R. F. Totala, learned Advocate appearing for petitioners vehemently submits that amendment sought to be introduced is necessary to unfold true and correct facts of case. The written statement filed on behalf of petitioners was drafted inconsistent to their instructions and same is result of mistake on the part of earlier Advocates. Mr. Totala urges that merely because application for amendment is filed belatedly it cannot be rejected. Mr. Totala, after taking this Court through original written statement and proposed amendment, submits that neither there is withdrawal of admission

and nor is amendment inconsistent to original pleadings, but learned Trial Court drew erroneous conclusions.

8. Per contra, Mr. L. B. Palod, learned Advocate appearing for Respondent supports impugned order and submits that once trial has commenced, there is no reason to entertain application for amendment in written statement and no valid grounds are made out for allowing the same. In support of his contentions, he relies upon judgment of Supreme Court in case of ***Life Insurance Corporation of India Vs. Sanjeev Builders Private Ltd., reported in 2023 (2) ALL MR 333***.

9. Having considered submissions advanced, it can be observed that plaintiff has approached Trial Court seeking decree of possession in respect of suit house property on the basis of registered sale deed dated 02.11.2019 executed by defendants. Petitioners/defendants filed written statement at Exhibit-15 and admitted execution of sale deed in pursuance to compromise as regards to loan transaction of Rs.25,00,000/-. The only grievance of petitioners is that they were assured issuance of No Objection Certificate as regards to loan. However, without adhering to promise, they were made to execute sale deed. In last paragraph of their written statement they specifically admitted that if No Objection Certificated is issued to them as to loan amount, they are ready to handover possession of suit property.

10. The perusal of proposed amendment would show that petitioners want to replace loan amount from Rs.25,00,000/- (Rs. Twenty Five Lac only) to Rs.16,00,000/- (Rs. Sixteen Lac only) and also want to introduce case of fraud and misrepresentation. Perusal of proposed amendment would definitely suggest that petitioners want to bring on record new defences, some of which are inconsistent with their original pleadings. Further, such amendment is sought when matter has already reached at the stage of evidence.

11. In this background, reference can be made to observations/ guidelines laid down by Hon'ble Supreme Court in case of ***Life Insurance Vs. Sanjeev (Supra),*** particularly in paragraph No.70, wherein it is stated that if amendment is required for effective and proper adjudication of controversy between the parties or to avoid multiplicity of proceeding or does not amount to withdrawal of admission made by party has to be allowed. However, when amendment changes nature of suit or attempts to set up entirely new case, it shall not be allowed.

12. In present case, although petitioners want to introduce some pleadings which are inconsistent with original pleadings, it does not change nature of defence in written statement. Petitioners are not denying execution of sale deed; however, they want to explain circumstances leading to execution of sale deed. Even in original written statement, they raised

similar type of defence. However, by way of amendment, they want to elaborate the same by introducing specific wordings as regards inducement/fraud exercised upon them. In light of parameters of law laid down by Hon’ble Supreme Court, amendments are to be allowed which are necessary for determining real question in controversy. Further, amendments in written statement are to be liberally allowed. Although petitioner wants to introduce additional or new approach to his defence or intends to rectify absence of material particulars in written statement merely on the ground of delay amendment cannot be rejected.

13. In that view of the matter, learned Trial Court has committed error while observing that defendants want to erase contentions in written statement and want to put up entire new case.

14. In result, Rule made absolute in terms of prayer clause ‘B’. Eventually, Application Exhibit-39 is allowed. Amendment to be carried out within a period of four (04) weeks from today.

[S. G. CHAPALGAONKAR, J.]

HRJadhav