



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

WRIT PETITION NO. 14312 OF 2023

Ganesh s/o Rambhau Ghatge
Age : 43 years, Occu. : Agri. & Business,
R/o. : Rani Lakshmibai Road,
Parbhani, Tq. & Dist. Parbhani.
Mob. 9996450999.

.. Petitioner

Versus

1. Smt. Suhasani w/o Late Prithviraj Patel
Age : 81 years., Occu. : Household,
R/o. : Patel Building, Mastgadh, Old Jalna,
Tq. & Dist. Jalna.
 2. Hiten s/o Late Prithviraj Patel
Age : 56 years., Occu. : Business,
R/o. : Patel Building, Mastgadh, Old Jalna,
Tq. & Dist. Jalna.
 3. Viren s/o Late Prithviraj Patel
Age : 54 years., Occu. : Business,
R/o. : Patel Building, Mastgadh, Old Jalna,
Tq. & Dist. Jalna.
 4. Kum. Jignasha D/o Late Prithviraj Patel
Age : 51 years., Occu. : Business,
R/o. : Near Shivaji Statue, In premises of A. P. Patel,
Station Road, Parbhani.
- .. Respondents

Mr. Milind M. Patil (Beedkar), Advocate for the Petitioner.
Mr. Nitin T. Tribhuwan, Advocate for Respondent Nos. 1 to 4.

**WITH
CIVIL APPLICATION NO. 10737 OF 2024
IN
WRIT PETITION NO. 14312 OF 2023**

1. Smt. Suhasani w/o Late Prithviraj Patel

Age : 81 years., Occu. : Household,
R/o. : Patel Building, Mastgadh, Old Jalna,
Tq. & Dist. Jalna.

2. Hiten s/o Late Prithviraj Patel
Age : 56 years., Occu. : Business,
R/o. : Patel Building, Mastgadh, Old Jalna,
Tq. & Dist. Jalna.
3. Viren s/o Late Prithviraj Patel
Age : 54 years., Occu. : Business,
R/o. : Patel Building, Mastgadh, Old Jalna,
Tq. & Dist. Jalna.
4. Kum. Jignasha D/o Late Prithviraj Patel
Age : 51 years., Occu. : Business,
R/o. : Near Shivaji Statue, In premises of A. P. Patel,
Station Road, Parbhani. .. Applicants

Versus

Ganesh s/o Rambhau Ghatge
Age : 43 years, Occu. : Agri. & Business,
R/o. : Rani Lakshmibai Road,
Parbhani, Tq. & Dist. Parbhani.
Mob. 9996450999. .. Respondent

Mr. Nitin T. Tribhuwan, Advocate for the Applicant Nos. 1 to 4.
Mr. Milind M. Patil (Beedkar), Advocate for Respondent.

CORAM : KISHORE C. SANT, J.

DATED : 16th JANUARY, 2025.

FINAL ORDER :-

. This petition is by the original plaintiff in Special Civil Suit No. 85/2022 pending before the learned Joint Civil Judge Senior Division, Parbhani against the order dated 02.09.2023 allowing the application of the respondents/defendants thereby granting permission

to file additional written statement subject to cost.

2. The facts in short are that, the plaintiff filed a suit for specific performance of contract and recovery of possession of the property. There was an agreement between plaintiff and the defendants for sale of land. The property is bearing No. 348 and 790 (old) 455 (New), from Ward No. 28, Rani Laxmibai Road, Parbhani. Further prayer was for perpetual injunction restraining defendants from alienating, transferring and creating third party interest over the property. In the alternative, it was prayed for recovery of an amount of Rs. One Crore at the rate of 18% per annum and mandatory injunction to defendants to record their names in PR. Card.

3. It is the case of the plaintiff that, an agreement took place between the parties. The property was to be sold for consideration of Rs. 1,59,09,800/- (Rs. One Crore Fifty Nine Lakh Nine Thousand Eight Hundred only). In spite of agreement the defendants refused to execute a sale deed. A suit was therefore filed. The defendants appeared and filed written statement on 25.08.2022. The defendants filed an application below Exh. 38. It is the case of the defendants that, the reply and written statement are not in accordance with the provisions of Order VIII of the Code of Civil Procedure (for short "C.P.C.") and therefore, there is likely to be a question posed at the end

of trial that no written statement is filed. They prayed for permission to place on record subsequent pleading or written statement. The plaintiff heavily resisted this application. It is specific contention that, already a written statement is filed. Thereafter, issues are also framed and the matter was posted for evidence of the plaintiff and therefore, the application under Order VIII Rule 9 of the C.P.C. is not maintainable. By way of this application, the defendants, in fact, want to bring subsequent pleadings on record. There is no subsequent fact in the written statement. Thus, there is no occasion for the defendants to file such application. The written statement is duly verified. If, at all, subsequent events are to be brought on record, the defendants can file an application under Order VI Rule 17 of the C.P.C. Thus, ultimately, it is prayed that the application be rejected as not maintainable and the same cannot be filed. By considering the arguments of the parties, the learned Trial Judge allowed the application and granted permission to defendants to file additional written statement subject to deposit of cost of Rs. 2,000/- (Rs. Two Thousand only). It is this order which is under challenge.

4. The learned advocate Mr. Patil for the petitioner vehemently argued that, in the present case, the written statement was filed on 25.08.2022. The issues were framed on 06.01.2023. When the

plaintiff was to start his evidence, this application is filed on 25.07.2023. No details are given as to for what purpose the additional written statement is required. By way of written statement now the defendants have introduced new facts and new contents. Paragraph Nos. 4, 8, 14, 15 and 18 are introducing totally a new case. It cannot be said that, by way of later written statement they have clarified or elaborated the contents of earlier written statement. If, at all, there was need to file anything new by way of pleading, the application could have been made under Order VI Rule 17 of the C.P.C. Order VIII Rule 9 of the C.P.C. only permits to bring on record subsequent events and not to substitute written statement. The only reason assigned for filing this application is change of advocate. He thus prays for allowing the writ petition by quashing and setting aside the impugned order.

5. The learned advocate Mr. Tribhuwan for respondent Nos. 1 to 4 strongly resisted the writ petition. He submits that, the law requires that there has to be a specific denial in the pleadings. In earlier written statement, there was no specific denial of the contents of the plaint. The said written statement was only in the nature of an affidavit. The learned Trial Court has rightly granted permission by considering the arguments and the judgments cited before the Court especially in the case of GTL Ltd. Vs. Maharashtra Rajya Rashtriya Kamgar Sangh and

others.

6. After hearing the parties, this Court has to consider as to whether the learned Trial Court has rightly passed an order. As to whether the order is against Order VIII Rule 9 of the C.P.C. when written statement was already filed and was on record and even the issues were framed.

7. When the defendants specifically say that earlier written statement is not in accordance with law, then whether that be taken as there is no written statement at all on record and in that view whether the application under Order VIII Rule 9 is maintainable. In the circumstances, as to whether the course open for the defendants to file an application for an amendment. Order VIII Rule 9 of the C.P.C. reads as below :

“9. Subsequent pleadings.— No pleading subsequent to the written statement of a defendant other than by way of defence to set-off or counter-claim shall be presented except by the leave of the Court and upon such terms as the Court thinks fit; but the Court may at any time require a written statement or additional written statement from any of the parties and fix a time of not more than thirty days for presenting the same.”

8. During the course of argument, the learned advocate for the petitioner relied upon the following judgments :

(i) GTL LTD. Vs. Maharashtra Rajya Rashtriya Kamgar Sangh and others reported in 2006 (3) Mh.L.J. 646.

(ii) Kalavath Vs. G. Amutha reported in AIR Online 2023 MAD 1260.

(iii) Datta @ Dattatraya Dnyanu Methe and others Vs. Sonabai Ganpati Methe and others reported in 2023 (4) Mh.L.J. 594.

(iv) Puran Ram Vs. Bhaguram & Anr. reported in 2008 (2) SC 166.

9. In the case of GTL LTD. (*supra*), this Court has considered the provisions of Order VIII Rule 9 of the C.P.C. It is held that, the additional written statement can be filed to explain the stand taken in original written statement.

10. In the case of Puran Ram (*supra*), the Hon'ble Apex Court was considering provision of Order VI Rule 17 of the C.P.C. This Court does not see that the said judgment is applicable to the present case.

11. In the case of Kalavath (*supra*), the Court at Madras on considering provisions of Order VIII Rule 9, the Court found that the

additional written statement was necessary as earlier written statement filed was not filed incorporating correct facts and law and therefore, it was necessary to give further explanation to the written statement.

12. In the case of Datta @ Dattatray Dnyanu Methe (*supra*), this Court has considered that, subsequent pleading or application for subsequent pleading is not to be resorted to in a routine manner. The Court has to arrive at a conclusion that, the written statement need elucidation on any point and in that case the Court may direct the parties to file subsequent pleading under Order VIII Rule 9 of the C.P.C.

13. From reading of the provision itself, it gives an idea that no subsequent pleading to be given after filing of the written statement. The subsequent pleading is permissible only by way of defence to set-off or counter claim without leave of the Court and upon such terms as the Court thinks fit. However, at the same time, the Court has the power to require a written statement or additional written statement from any of the parties. It is thus clear that, there is no absolute bar to file subsequent pleading. What is required is leave of the Court, however, what is expected is some cause for filing such subsequent pleading for denying or clarifying the pleading. It is for the Court to carefully pass an order.

14. Thus, considering the legal position and reading of the rule this Court has to consider as to whether in the present suit, a case is made out to file subsequent pleadings. Looking to the submission made by the learned advocate for the petitioner, this Court has to see as to what is tried to be added by way of subsequent pleadings. In paragraph No. 8, now, the respondents have denied that, the plaintiff paid consideration of Rs. 30,00,000/- (Rs. Thirty Lakh only) to late Prithviraj in two installments out of which Rs. 4,00,000/- (Rs. Four Lakh only) and Rs. 9,00,000/- (Rs. Nine Lakh only) by cheques and Rs. 17,00,000/- (Rs. Seventeen Lakh only) in cash on 11.11.2020. It is pleaded that, there was no condition in the agreement that after payment of Rs. 70,00,000/- (Rs. Seventy Lakh only) the plaintiff will have to pay Rs. 30,00,000/- (Rs. Thirty Lakh only) to Prithviraj. In paragraph No. 14, it is pleaded that in the plaint in paragraph No. 11 the particulars of the agreement are not mentioned by the plaintiff. Though there are other paragraphs also, but those are not material. Looking at the application, it is the case of the defendants that the written statement is not according to the provisions of Order VIII of the C.P.C. To avoid the legal complications subsequent pleadings are to be submitted. It is not given as to in what way the written statement was not as per Order VIII of the C.P.C. Another reason stated is that, the advocate is now changed and it is thereafter defendants came to know

about the deficiencies in the written statement and therefore, now they want to file subsequent pleadings. Though it is vehemently argued by the respondents-original defendants, this Court finds that, it is mainly submitted that the subsequent pleading was required to give clarification and to state the deficiencies in elaborate manner. It is also a case that, since there is no change in the pleading and amendment as such, no application is filed under Order VI Rule 17 of the C.P.C.

15. If the submission of learned advocate for the respondents is to accept, then this Court finds that, in paragraph Nos. 8 and 15 the defendants have introduced certain new pleadings in the written statement. Considering the judgments discussed above and the facts of the case, this Court finds that, the learned Trial Judge has not considered this aspect properly. The judgment in the case of **GTL LTD.** (*supra*), already considered, this Court finds that, it has no application in the present case.

16. Considering all above, this Court finds that, a case is made out by the petitioner calling for interference at the hands of this Court. Thus, this Court finds that, the learned Trial Court has committed an error in passing the impugned order. Therefore, the impugned order is quashed and set aside.

17. The writ petition stands disposed of. No order as to costs.

18. In view of disposal of writ petition, civil application also stands disposed of.

(KISHORE C. SANT, J.)

P.S.B.