

**CNR : MHCH040000052009**

**ORDER BELOW EXH.73**

(Passed on 10.03.2022)

The original defendant in RCS No. 6/01 preferred an instant application U/O 6 Rule 17 of the Code of Civil Procedure on 05.11.2019 for amendment in written statement as a proposed para 9D. The opponent/plaintiff raised strong objection that the instant application is filed at belated stage, the decree has been passed against this defendant long back but in order to avoid its execution he is going to file number of applications.

I heard both the sides at length, perused the record. The original suit No. 6/2001 was for possession and mandatory injunction which is came to be decreed on 30.10.2009 whereby the defendant/appellant herein asked to deliver the possession of suit land shown by letters ABCD to A in a plaint map at Exh.53 within a month. Against that judgment the defendant preferred instant appeal and as per record the same came to be dismissed with costs on 06.09.2017 by the Ld. predecessor this Court.

It is a matter of record that said defendant had preferred second appeal No. 773/2017 wherein by order dated 03.08.2018 he was permitted to carry out amendment below Exh. 43 which was rejected by the predecessor of this Court. It is also ordered to decide the appeal expeditiously. Accordingly the defendant has carried out amendment in his written statement as per Exh.43 and the matter was listed for final argument, but surprisingly he

(defendant) again moved the instant application below Exh.73 for second amendment by which he intends to plead that “as per sanctioned map dated 06.09.1993 he completed the construction in the year 1995-96. He obtained water tab connection from the Nagar Parishad and he is in peaceful possession.” It reveal that knowledge of proposed amendment was with him from the beginning, he already hotly contested the suit and lost the civil battle on merit. The point of controversy is whether he made an encroachment or not and the same can be decided finally without proposed amendment. No prejudice would be caused to the defendant if the proposed amendment is not allowed. It is seen that the defendant is intending to prolong the matter in order to avoid the execution of decree which is passed against him in the year 2009. It is nothing but abuse the process of law. I did not find any substance in the present application, it needs to be rejected with reasonable costs, hence, following order ;

**ORDER**

1. Application Exh.73 is hereby rejected and disposed off accordingly with costs of Rs. 3,000/- payable to the plaintiff/respondent herein.

Warora  
Date : 10.03.2022

(D.K. Bhende)  
District Judge-1,  
Warora.