



Order Below Exh. 67 In RCS 167-2014

1. This is an application filed by defendant under Order 6 Rule 17 seeking amendment and addition of defence ground in his written statement. The plaintiff has filed his say to this application at exh. 69 and denied the contention of defendant.

2. In the application the bone of contention is that suit for specific performance injunction though the case is for evidence yet while going through the documents of plaintiff on which they rely strongly, it was noted by the defendant that, there is over-writing made by the plaintiff in agreement to sell dated 22.12.2000 thereby making 3 to 30. Unless the defence is raised as to the fraud played by the plaintiff in this matter, the defendant cannot lead his defence. Unless it is pleaded evidence cannot be adduced of a fact. Hence on this ground, prayed for allowing the application.

3. It is argued by the plaintiff that, the matter is 10 years old. Evidence has already begun. two witness affidavits are on record. The document in which over-writing is made & fraud is played is on record. Plaintiff has not made any over writing on the said document. The said document has been impounded by the order of court. The application of defendant is baseless just to prolong the matter this application is

moved. No due diligence shown by defendant in raising this defence hence, application be rejected.

4. Heard both sides perused the application and say. Indeed the stage of matter is for evidence. Defendant remained absent hence no cross order are passed for the witnesses of plaintiff On 06.02.2024 Defendant No. 1, 3 & 4 have placed on record new V.P. and engaged Adv. Mukadam. On 19.03.2024 'no cross set aside' application was moved on which by imposing costs same is allowed. So now the matter is pending for cross-examination for P.W.2. Before the cross-examination being this application at hand is moved by the defendant. Indeed the proviso of Order 6 Rule 17 come into force but it is pertinent to note that defence side has opportunity to add their number of defences unless those are added the question in cross-examination cannot be put to the witness. If this amendment is allowed then according to defendant his defence cannot be well stated. The plaintiff will get the opportunity to make consequential amendment. As for the lapse of period cost can be imposed on the defendant.

5. For meritorious decision of present suit it is necessary to allow this application. It doesn't change the nature of suit. Hence with this reasoning I pass following order :-

ORDER

1. Application at exh.67 is allowed subject to costs of Rs.200/- be paid to Bhore Bar Association.
2. Defendant carry out the amendment and furnish amendment copy.

Place : Bhore
Date : 04/03/2025


(N.K. Nagargoje)
C.J.J.D, Bhore Pune.