

ORDER BELOW EXH. 01

1. Present suit is for specific performance of contract. Initially suit was filed before C.J.S.D., Kalyan on 30/04/2004 accordingly suit had registered as Special Civil Suit bearing no. 75/2004. Subsequently suit has been transfer to this court vide District Court order no. CS/A-1/382/10 dated 09/01/2010. Eventually the transfer suit has been registered in the filed of this court as regular civil suit no. 119/12 on dated 23/04/2012.

2. In the present suit there are six defendants vide order dated 23/11/2007 suit was ordered to proceed without written statement against defendant no. 1. Thereafter plaintiff has filed application at Exh. 15 on 06/11/2009 to bring Lrs of defendant no. 6 on record. Said application Exh. 15 was allowed by order dated 04/12/2009 and accordingly Lrs of defendant no. 6 were brought on record on 22/07/2010 and to that effect amended plaint was filed on record by plaintiff on dated 26/08/2010.

3. On 15/10/2010 defendant no. 1 to 4 had filed an application at Exh. 52 with prayer to set- site NO W.S. order passed against defendant no. 1 dated 23/11/2007 with prayer for permission to accept W.S. of defendant no. 2 to 4. On 03/12/2014 application at Exh. 22 was allowed for cost of Rs. 500/-. By said order defendant no. 1 to 4 was permitted to filed there W.S. It is important to mention here that Exh. 22 was filed by defendant no. 1 to 4 along-with the W.S. for themselves and from defendant no. 6/1 to 6/3. As defendant no. 1 to 4 failed to comply to the order passed below Exh. 22 suit was ordered to proceed without W.S. against them vide order below Exh. 1 on dated 24/09/2014.

4. As its clear from the record that till plaintiff closed her evidence vide pursis below Exh. 39 by that time there was no order against defendant no. 6/1 to 6/3 as regards NO W.S. It is significant to mention here that written statement to defendant no. 6/1 to 6/3 was already on record however said

was not exhibited. Plaintiff after closing her evidence vide pursis Exh. 39 has filed pursis below Exh. 51 and inform to this court that she has no objection to exhibit the written statement of defendant no. 6/1 to 6/3. Resultant written statement filed along with Exh. 22 was taken on record at Exh. 52 to the extend of defendant no. 6/1 to 6/3.

5. It is worth mentioning that it clears from the record that defendant no. 5 was minor at the time of filing suit it further clears that, suit summons was not served on him till suit come to the stage of final argument. In this situation at the time of final argument plaintiff filed in application vide Exh. 56 under order 6 Rule 17 to carry out the amendment as regards attendant of majority by defendant no. 5. In other word sufficient opportunity was not afforded to defendant no. 5. Therefore, by order dated 22.01.2024 application Exh. 56 was allowed and amendment has been carried out by plaintiff.

6. Considering all above events for proper adjudication of the suit and to hear all the interested parties in the suit it would be just and proper to issue suit summons to the defendant no. 5. Hence I passed following order :-

ORDER

- A. Plaintiff is directed to filed amendment copy on record without failed on or before next date.
- B. Plaintiff is directed to take step against defendant no. 5.
- C. Plaintiff is directed to filed copies on record for service on defendant no. 5.

Date : 22/01/2024
Place : Shahapur.

(**V.N.Shimpi**)
Joint Civil Judge (J.D.),
Shahapur, Dist.Thane.