

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

WRIT PETITION NO. 3430 OF 2015

Kashinath s/o Sitaram Moralwar,
Age: 42 years, Occ: Agri.,
R/o. Deulgally, Tq. Loha,
Dist. Nanded.

...Petitioner

versus

Vinayak s/o Sitaram Moralwar,
Age: 40 years, Occ: Business,
R/o. Shivkalyannnagar, Loha,
Tq. Loha, Dist. Nanded & anr.

...Respondents

.....
Mr. P.S. Anerao, Advocate for petitioner
Mr. D.M. Shinde, Advocate for respondents
.....

CORAM : N.W. SAMBRE, J.

DATE : 16th NOVEMBER, 2015

ORAL ORDER :

This petition is by the original plaintiff questioning the order dated 09/02/2015 passed by learned Joint Civil Judge, Junior Division, Loha, wherein the application under Order 6 Rule 17 of the Code of Civil Procedure was partly allowed. Mr. Anerao, learned Counsel for the petitioner would urge that the application for amendment should have been granted in totality, as according to him, granting of application for amendment would not have change the nature of proceedings, as trial in the suit is yet to be commenced. According to him, by allowing the application in part, the Court below

was conscious of the fact that the amendment would be granted even at the stage at which it was moved and the trial in the suit is yet to commence.

2. Learned Counsel for the respondents, while opposing the application, would urge that the written statement in the matter is already filed and if the amendment which was not granted, if granted by this Court will certainly resulted into taking away/withdrawing admissions given by the plaintiff and also will change the nature of claim in the suit.

3. Having perused the contents of the application and the reasons noted by learned Court below while dealing with the application, it is noticed that the written statement is already filed by the respondents herein. The defendant No. 2 has also filed reply opposing the application for grant of amendment. By way of amendment, the petitioner has sought deletion of certain pleadings, which according to learned Court below amounts to taking away admissions.

4. In my opinion, the reason furnished by learned Court below while rejecting the application for grant of amendment is just and proper and does not call for any interference in extraordinary writ

jurisdiction. The Court below in detail has already considered the case of the petitioner prima faice, in prayer for amendment, the petitioner intend to withdraw the admission given. The writ petition fails, same stands dismissed.

[N.W. SAMBRE, J.]