

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

WRIT PETITION NO. 4676 OF 2014

M/s Rohit Construct, Chalisgaon,
Through its Partners-

1. Shekhar Kanhaiyalal Bajaj,
Age : 50 years, occ. Business
2. Hiranand S/o Chandiram Bajaj,
Age : 48 years, Occ. Business

Both R/o Doodh Sagar Marg,
Bajaj Palace, Chalisgaon,
District : Jalgaon.
3. Kisan s/o Punjilal Maheshwari,
Age: 50 years, occu. Business,
4. Santosh S/o Dwarkadas Maheshwari,
Age: 48 years, Occu. Business.

Both R/o Khandesh Extruction,
Chalisgaon, Dist. Jalgaon.
5. Kishor S/o Manakchand Agrawal,
Age: 60 years, Occu. Business,
R/o Station Road, Chalisgaon,
District : Jalgaon.
6. M /s Rohit Construction
Partnership firm for and on behalf of
Firm Shri Kishor Manakchand Agrawal,
Partner, hav ing Registered Offic e at
Bhavanji Shivji Tejpai Compound
Station Road, Chalisgaon,
District : Jalgaon.

...PETITIONERS
(Ori. Plaintiffs)

versus

Prakash S/o Ramchandra Deshpande,
Age- 60, Occu. Business,
R/o Ghat Road, Near Chajed Oil Mill,
Chailsgaon, Dist. Jalgaon.

...RESPONDENT
(Ori. Defendant)

.....
Mr. L.V . Sangeet, Advocate holding for
Mrs.M. L Sangeet, Advocate for Petitioners
Mr. A.P. Yenegure, Advocate holding for
Mr. K.P. Chaware, Advocate for respondents
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CORAM : SUNIL P. DESHMUKH, J.

DATED : 21st AUGUST, 2015

ORAL JUDGMENT:

1. Rule. Rule made returnable forthwith. Heard the learned counsel for parties finally, with consent.
2. The petitioners - original plaintiffs are before this court against order dated 05-04-013 on Exhibit-79, in regular civil suit No. 150 of 2002, passed by joint civil judge, junior division, Chalisgaon, whereunder their application for amendment to plaint has been rejected.
3. Learned counsel for parties are not at dispute that suit has been filed, seeking relief of recovery of possession in respect of the property referred to in the plaint viz; some temporary shed and machineries etc.
4. As suit proceeded, commissioner came to be appointed and that his report shows that there has been accession to aforesaid property by the tenant. In the circumstances, aforesaid application Exhibit-79 has been moved seeking amendment to add relief of recovery of possession of portion of land of such accession by the tenant. The trial court, however, considered that this may change the nature of suit and, as such, had found it difficult to accede to the request made under application Exhibit-79.

5. Learned counsel Mr. Sangeet appearing for petitioners submits that while original plaint had been lodged, recovery of possession had been sought not only with reference to Bombay Rent Control Act but also according to other prevailing laws. He submits that scope of the suit is not restricted or confined to Bombay rent Control Act. He submits that if there is accession by the tenant, it would always be subject-matter of the suit even under the Bombay Rent control Act. He submits that the judgments cited by the plaintiffs-petitioners have been considered not to be applicable, however, such appreciation may not proper and instead of curtailing litigation, it would give rise to multiplicity of proceedings. He, therefore, submits that instead of taking narrow view of the matter, liberal approach holding the field of amendments ought to have been taken into account.

6. Mr. Chaure, learned counsel appearing for defendant, however, submits that proceedings of the suit are procrastinated under the frequent amendment applications being filed by the plaintiffs. He submits that this is fourth application for amendment, in respect of encroachment upon land in the suit filed under Bombay Rent Control Act. He submits that this may not be possible.

7. However, taking into account overall situation and prevailing position of law that a liberal approach is desirable towards application for amendment and having regard to position as has been contended about accession by defendant, it would be expedient that such amendment is considered in favour of the plaintiffs/petitioners in order to avoid multiplicity of the proceedings, leaving it open for the parties

to raise contentions in this respect, in particular, about accession as alleged, for consideration by the trial court based upon evidence in this respect. Under the circumstances, I deem it appropriate to set aside the order impugned.

8. Accordingly, order dated 05-04-013 on application Exhibit-79 amendment to plaint in regular civil suit No. 150 of 2002, passed by joint civil judge, junior division, Chalisgaon, stands set aside. Application Exhibit-79 stands allowed.

9. Writ petition, as such, stands allowed. Rule is made absolute accordingly.

Sd/-

(SUNIL P. DESHMUKH, J.)

MTK
