

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

**WRIT PETITION NO. 8909 OF 2014
WITH
WRIT PETITION NO. 8910 OF 2014**

1. Arvind s/o Namdeo Tilekar,
Age: 61 years, Occ: Agri.,
2. Kailas s/o Datatrya Kulthe,
Age: 57 years, Occ: Agri.,
3. Ramesh s/o Kedarnath Udawant,
Age: 52 years, Occ: Agri.,

All R/o. Saraf Bazar, Kopergaon,
Tq. Kopergaon, Dist. Ahmednagar. ...Petitioners

versus

1. Sandhya Dilip Bhalerao,
Age: 44 years, Occ: Household,
R/o. Saraf Bazar, Kopergaon,
Dist. Ahmednagar.
2. The Chief Officer,
Municipal Council, Kopergaon,
Tq. Kopergaon, Dist. Ahmednagar. ...Respondents

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Mr. Amol S. Gandhi, Advocate for petitioners.
Mr. V.S. Bedre, Advocate h/f Mr. S.B. Kadu, Advocate for respondent No.1.
Mr. S.S. Patankar, Advocate h/f Mr. M.M. Patil (Beedkar),
Advocate for respondent No.2.

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CORAM : N.W. SAMBRE, J.

DATE : 29TH APRIL, 2015

ORAL ORDER :

By the impugned order passed on application Exhibit-114

and Exhibit-118 in Regular Civil Suit No. 67 of 2009, learned trial Court rejected the prayer for amendment to the written statement.

2. The cause cited for rejection of such prayer is the commencement of trial and the time bound order issued by this Court for deciding the suit in question.

3. While considering the request for grant of amendment to the written statement, Mr. Bedre, learned Counsel for respondent No.1 while opposing the same, would urge that the amendment which is sought to be incorporated in the written statement at belated stage. According to him, the plaintiff has already filed his examination in chief and trial in the suit has already commenced. He would urge that the fact which was well within knowledge, the petitioner should have been pleaded at the time of filing of the written statement itself. He would further urge that this Court having regard to the nature of controversy has already ordered expediting the suit which is not taken to its logical end. In support of this contention, he has relied upon the judgment of this Court in the matter of **Jayashree Subhash Kalbande and another vs. Bhaurao Nagorao Derkar and others** reported in **2014(4) Mh.L.J. 168**, particularly paragraph-10 of the said judgment so as to canvass that the test while granting application for amendment is required to be adhered to.

4. Mr. Gandhi, learned Counsel for the petitioners has disputed the stage at which the application for amendment is made, however, he would urge that the amendment is necessary in the interest of justice and for deciding the issue involved.

5. If the observations made by the trial Court are tested while rejecting the application for amendment, this Court must be alive of the fact that the amendment is sought in the written statement at the very beginning of the commencement of trial. Mr. Gandhi, learned Counsel for the petitioners, upon instructions made motion that he is not pressing prayer for counter claim and same is taken on record.

6. So far as the claim for amendment to the written statement is concerned, it is required to be noted that in written statement paragraph-10 already basic pleadings in relation to status of wall in question about its strength is already pleaded. In proposed paragraphs-23 and 24 of the application for amendment which is sought to be inserted in written statement. The said pleadings are sought to be strengthened.

7. The ground for rejection, which is enumerated by

learned trial Court in the order impugned is concerned, the same is based on limitation aspect qua grant of amendment for counter claim. In the present case, admittedly learned Counsel for the defendant has not pressed prayer for carrying out amendment for counter claim.

8. Apart from above, if other amendment which is sought in the matter is tested in the light of pleadings in paragraph-10 of written statement, it is required to be noted that the plaintiff was not taken by surprise by way of proposed amendment to the written statement.

9. The law on the issue about grant of written statement is well settled that same required to be construed very liberally.

10. Though Mr. Bedre, learned Counsel for respondent No.1 placed reliance upon judgment of this Court cited supra, it is required to be noted that such amendment which goes to the root of the matter and is necessary in the interest of justice, is required to be granted.

11. In view of above, in my opinion, the order impugned passed below Exhibit-114 and 118 is hereby set aside but for finding on the issue of counter claim.

12. Applications Exhibits-114 and 118 stand granted, except prayer for counter claim, subject to payment of Rs.10,000/- (Rs. Ten thousand only) towards costs, to be deposited with Mr. S.B.Kadu, learned Counsel for respondent No.1 within four weeks from today.

13. It is expected of the trial Court to stick up to the limit of six months.

14. By consent, the order dated 20/08/2014 passed by 4th Joint Civil Judge, Junior Division, Kopargaon in Regular Civil Suit No. 67 of 2009 refusing cross examination after re-examination of the plaintiff is hereby set aside. The petitioners are at liberty to cross examine the plaintiff only to the extent of C.T.S. No. 734.

14. The writ petitions stand disposed of in above terms.

[N.W. SAMBRE, J.]