

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 4408 OF 2014**

Jotiram Bharmachalkar and
Ors

..Petitioners.

Vs

The State of Maharashtra and
ors

.. Respondents

Mr. Amit B. Borkar , Advocate for Petitioners.

**CORAM : R.G.KETKAR,J.
DATE : 08/06/2015**

PC:

1. Heard Mr. Amit Borkar, learned counsel for the petitioners at length.
2. By this Petition, the original plaintiffs have challenged the order dated 3.1.2014 passed by the learned 2nd Jt. Civil Judge Sr.Dn., Kolhapur, below Exhibit 107 in Regular Civil Suit No.962 of 2013. By that order, the learned trial Judge rejected the application taken out by the petitioners for amendment of Plaint under Order VI Rule 17 of C.P.C.
3. In support of this Petition, Mr. Borkar strenuously contended that trial is yet to commence. The application for amendment is to be considered liberally. The proposed amendment is absolutely necessary for resolving the controversy between the parties. By the proposed amendment, the petitioners want to give explanation to the assertions made by defendant no.4 in the

addition Written Statement. The proposed amendment is merely clarificatory in nature. He further submitted that unless foundation is laid in the suit, the Court will not permit leading of evidence. It is not possible to accept this submission. In paragraph 5, the learned trial Judge has noted that the petitioners have instituted suit for declaration that the notice dated 11.9.2003 issued by the original defendants no.1 to 3 to withdraw possession of the suit property from the plaintiffs is illegal, null and void as also without jurisdiction. The petitioners have also sought relief of injunction. The subject matter of the suit is essentially the legality and validity of the suit notice. Parties are required to lead oral as well as documentary evidence to establish their case and on the basis of the same, the Court has to determine whether the notice is legal or illegal.

4. In paragraph 6, the learned trial Judge further observed that by the proposed amendment, the petitioners want to give explanation to the amended written statement filed by defendant no.4. The said amendment is absolutely not necessary as the facts pleaded in the form of explanation, can be sought during the course of evidence of defendant no.4 or also by leading oral and documentary evidence by the plaintiffs themselves. I do not find that the learned trial Judge has committed any error in passing the impugned. Order. Hence, no case is made out for

invocation of powers under Article 227 of the Constitution of India. The Petition fails and the same is dismissed.

5. It is, however, expressly made clear that where a decree is appealed from by the petitioner, any error, defect or irregularity in the impugned order, affecting the decision of the case, may be set forth as a ground of objection in the memorandum of appeal as contemplated by Section 105(1) of C.P.C.

(R.G.KETKAR, J.)