

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 2012 OF 2015

Kantaram B. Hargude and ors. .. Petitioners

vs.

Sou. Vaishali R. Choudhari and ors. .. Respondent

Mr. S.S. Kanetkar for the Petitioner Nos. 2 to 7.

Mr. Madhav Jamdar i/b.N.M. Wable for Respondent No.1.

CORAM : M. S. SONAK, J.

DATE : 5 May, 2015.

P.C. :-

1] Not on board. Upon production, taken on board.

2] This petition challenges the order dated 20 December 2014 made by the 7th Joint Civil Judge, Junior Division, dismissing the petitioners' application for amendment of written statement, *inter alia*, on the ground that the same was applied for after commencement of the trial in the suit and the petitioners had not been able to make out a case that in spite of due diligence the petitioners could not have raised the matter before the commencement of trial.

3] In the present case, the issues were cast on 12 August 2014. The plaintiff had filed an affidavit in lieu of examination-in-chief on 10 September 2014. On 19 September 2014, the petitioners applied for adjournment to proceed with cross-examination. On 4 October 2014, the petitioners applied for framing of an additional issue, which request was granted by the Trial Court on 7 October 2014. On

14 October 2014, the petitioners once again did not proceed with the cross-examination and consequently, '*no cross order*' was made. On 16 October 2014, upon a motion by the petitioners, '*no cross order*' was set aside and the petitioners proceeded with their cross examination. On the same date, the petitioners applied for amendment to the written statement, which has been rejected by the impugned order dated 20 December 2014.

4] If aforesaid circumstances are taken into consideration, then this is really not a case where this Court should exercise its extraordinary jurisdiction under Article 227 of the Constitution of India. The application seeking leave to amend, purports to explain the steps which the petitioners took after the disposal of the Miscellaneous Civil Appeal instituted by the plaintiff against the rejection of interim reliefs. The District Judge dismissed the plaintiff's Miscellaneous Appeal, but directed the disposal of the suit itself with expedition. There is no explanation, in the application seeking leave to amend as to why in spite of diligence, the petitioners were unable to raise the issues which they now seek to raise by way of amendment of written statement. Accordingly, this is not a fit case to interfere with the impugned order, at this stage.

5] However, if ultimately, the suit is decided against the petitioners, and the petitioners decide to institute an appeal against the decree so made, the petitioners can be granted liberty to question the impugned order in such an appeal. Such course, is required to be adopted in the present case, because there is already an order for expeditious disposal of the suit. Besides, the trial in the

suit has already commenced, the petitioners, applied for time to proceed with the cross-examination and it is only thereafter that the petitioners have chosen to file an application seeking leave to amend the written statement.

6] Accordingly, present petition is disposed, with liberty as aforesaid. There shall be no order as to costs.

(M. S. SONAK, J.)

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