

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION  
WRIT PETITION NO. 6630 OF 2015

Shantaram Nimba Raundal .. Petitioner  
vs.  
Rajendra Pandurang Raundal .. Respondent

Ms Kinnari Hingol i/b Mr. Sandip D. Shinde for the Petitioner.

**CORAM : M. S. SONAK, J.**  
**DATE : 31 JULY 2015.**

**P.C. :-**

- 1] Rule.
- 2] At the stage of issue of notice on 13 July 2015, it was made clear that this matter will be disposed of at the stage of admission.
- 3] Learned counsel for the petitioner states that the service has been effected upon the respondent and necessary affidavit of service has also been filed.
- 4] This petition challenges the order dated 10 June 2015, by which the learned Civil Judge, Junior Division, Kalwan has declined leave to amend the plaint mainly on the ground that such leave was applied for after conclusion of cross-examination of the plaintiff.

5] Although, the Trial Court is right that normally leave to amend cannot be granted upon the commencement of the trial, but there are some exceptions to this rule. In the present case, the plaintiff contends that despite the interim order restraining putting up of any constructions in the suit property, the respondent has put up construction of an onion godown during the pendency of the suit and despite interim orders. It is in these circumstances, the leave is applied for to amend the plaint and seek a mandatory injunction to demolish such construction. There is some marginal delay, but in the facts and circumstances of the present case, it cannot be accepted that the petitioner has not acted vigilantly. The denial of leave to amend might only result in multiplicity of proceedings. The circumstance that the construction was allegedly put up during pendency of the suit and in alleged defiance of restraint order, is also a relevant consideration.

6] For all the aforesaid reasons, the impugned order dated 10 June 2015 is set aside. The petitioner's application at Exhibit-32 is granted. All this is subject to the petitioner's paying costs of Rs.5,000/- to the respondent within a period of two weeks from today. Such costs to be deposited before the Trial Court and

thereupon the respondent shall be at liberty to withdraw the same unconditionally. Necessary amendment to be carried out within a period of three weeks from today and there shall be liberty to the respondent to file an amended written statement or additional written statement within a period of four weeks from the date of furnishing of copy of the amended plaint.

7] Rule is made absolute to the aforesaid extent.

8] All concerned to act upon an authenticated copy of this order.

**(M. S. SONAK, J.)**

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