

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**CIVIL APPLICATION NO.2862 OF 2015
IN
WRIT PETITION NO.5588 OF 2015**

**Mangala Gopichand Raut and anr. : Petitioners/Applicants
versus
Tukaram Genuji Satav and ors. : Respondents.**

**Mr. Vaibhav A Sugdare for the Applicants.
Mr. Uday P Warunjikar for the Respondent Nos. 2 to 5**

**CORAM : R. M. SAVANT, J.
DATE : 16th October 2015**

P.C.

1 The above Civil Application has been filed for extension of time to carry out the amendment in Special Civil Suit No.21 of 2011 in terms of the order dated 10/08/2015 passed in Writ Petition No.5588 of 2015. By the said order dated 10/08/2015, a learned Single Judge of this Court (Coram : R G Ketkar, J) has partly allowed the application (Exhibit 110) for amendment of the plaint to the extent mentioned in the said order. Vide the direction issued in paragraph 14, the said amendment in the plaint was to be carried out within one week from the date of the said order i.e. from 10/08/2015. It is the case of the Applicants that the order was made available to them in Pune on 17/08/2015 itself and thereafter they approached the Court on 18/08/2015 by way of an oral application and thereafter a purshis was filed on 20/08/2015 for carrying out the amendment.

2 The said purshis marked as Exhibit 344 was opposed to on behalf of the Respondents herein. In the Say which has been endorsed on the purshis, the Respondents have stated the reasons as to why they are opposing the application. The Respondents have also stated that if the time is to be extended, then the same be done by imposing costs of Rs.5,000/- on the Plaintiffs.

3 The Trial Court considered the said application and has rejected the same by the order dated 20/08/2015. The rejection is principally on the ground that the time was fixed by this Court and therefore the Trial Court could not extend the time. Another reason mentioned was that the time frame fixed by this Court was not disclosed by the Applicants in their application. After the rejection of the application, the Plaintiffs moved a praecipe to this Court on 28/09/2015 seeking extension of time.

4 The modality of seeking extension of time by a praecipe was opposed to on behalf of the Respondents. The fact that the Trial Court has passed the order on 20/08/2015 was also pointed out to this Court upon which this Court opined that a formal application would have to be filed for seeking extension of time, that is how the instant Civil Application has been filed.

5 On behalf of the Respondents an affidavit in reply has been filed to which affidavit the order dated 09/05/2014 passed by the Apex Court in SLP No.8599 of 2014 is annexed. By the said order the Apex Court has fixed a time frame of 6 months for the disposal of the suit. To the said affidavit has been annexed the orders rejecting the applications for transfer filed by the Plaintiffs after this Court has passed the said order dated 10/08/2015 in the said Writ Petition No.5588 of 2015.

6 The conduct of the Petitioners/Plaintiffs has also been highlighted by the averments made in the plaint and one of the averments is to the effect that as many as 4 advocates have been changed by the Plaintiffs and that on a given date the matter was not proceeded with by the Plaintiffs, though they were required to do so in view of the directions of the Apex Court.

7 The aforesaid facts no doubt reveal the manner in which the Plaintiffs are prosecuting the suit. The aforesaid facts also in a way demonstrate that the Plaintiffs seem to be adopting dilatory tactics. However, as indicated above, the Writ Petition filed by the Plaintiffs was allowed by this Court and the application for amendment filed by the Plaintiffs was partly allowed and what remains was only carrying out of the amendment in the plaint for which there is an overrun of about 2 days or 3 days of the time frame

fixed by this Court. Hence though the conduct of the Plaintiffs cannot be said to be such that they are cooperating in the early disposal of the suit, nevertheless having regard to the fact that the said Writ Petition filed by them was allowed by this Court and thereby they were permitted to amend the plaint in terms of the said order, in my view, it would be just and proper to show indulgence to the Plaintiffs in the matter of carrying out the amendment in the plaint. The above Civil Application is allowed. The Applicants i.e. the original Plaintiffs are allowed to carry out the amendment in the plaint in terms of the order dated 10/08/2015 within one week from date. In the facts and circumstances of the present case, it would be just and proper to impose costs of Rs.5,000/- on the Applicants – Plaintiffs to be deposited in the Trial Court on or before 23/10/2015. On such deposit being made, the Respondents would be entitled to withdraw the same. It is expected of the Plaintiffs that they would cooperate in the early disposal of the suit in question as directed by the Apex Court. The above Civil Application is accordingly disposed of.

8 Parties to act upon an ordinary copy of the instant order duly authenticated by the Court Associate/Sheristedar.

[R.M.SAVANT, J]