

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 10577 OF 2014

Laxmibai Narayan Satose
(since deceased) through her
heirs Smt. Uma Shankar Padate .. Petitioner
VS.
Annayya Kocha Shetty & Ors. .. Respondents

Mr. M. A. Dudhane for Petitioner.
Mr. A. S. Khandeparkar with Mr. Rakesh Pathak for Respondent
No. 1.

CORAM : M. S. SONAK, J.
DATE: 25 JUNE 2015

P.C. :-

1] This petition challenges the order dated 29 October 2014, by which the appellate bench of the Small Causes Court has dismissed the petitioner's application seeking amendment to the written statement at the stage when the appeal was posted for final hearing.

2] The learned counsel for the petitioner submits that the amendment was only in relation to the issue of limitation, as it is the case of the petitioner that the proceedings as originally instituted were barred by limitation.

3] There is no reason to interfere with the impugned order. In the first place, there is no explanation whatsoever as to what prevented the petitioner from raising such an issue before the trial Court when the written statement was originally filed. In any case, the provisions of Section 3 of the Limitation Act, 1963 make it clear that the responsibility of deciding the issue of limitation is upon the Court, even though limitation has not been set up as a defence. Accordingly, there is no necessity to permit the amendment of the written statement and that too at the stage when the appeal against the decree has come up for final hearing.

4] It is made clear that contentions of all parties are left open for decision by the appellate court.

5] This petition is accordingly dismissed with observations as aforesaid. There shall in the facts and circumstances of the present case, no order as to costs.

(M. S. SONAK, J.)