

drp

**IN THE HIGH COURT OF JUDICATURE OF BOMBAY**  
**BENCH AT AURANGABAD**

**WRIT PETITION NO.7025 OF 2015**

Trilokchand Sugnomal Dhanwani (Sindhi)  
Since deceased through L.Rs.

PETITIONERS

- 1] Gagandas Trilokchand Sindhi  
Age - 45 years, Occ- Business,  
R/o Block No.3, Room No.10,  
Juni Sindhi Colony,  
Nandurbar
- 2] Shri Prakash Trilokchand Sindhi  
Age - 30 years, Occ - Business,  
R/o Plot No.72, Nagai Nagar,  
Nandurbar
- 3] Draupatibai Trilokchand Sindhi  
Age - 40 years, Occ - Household  
R/o Plot No.72, Nagai Nagar,  
Nandurbar
- 4] Ratnabai Jagdishlal Ahuna,  
Age - 35 years, Occ - Household  
R/o Sindhi Colony,  
Near Laylaxmi Kirana Bhandar,  
Umanagar, Nashik
- 5] Shamabi Rameshlal Sindhi  
Age - 32 years, Occ - Household  
R/o House No.525, Ramnagar,  
Surat (Gujrath)
- 6] Rekhabai Jitendrakumar Sindhi  
Age - 30 years, Occ - Household  
R/o Near Jhulelal Temple,  
Sindhi Colony,  
Malkapur

VERSUS

Ashom Dallomal Nathani

RESPONDENT

Age - 52 years, Occ -  
R/o June Sindhi Colony,  
Nandurbar

.....

Mr. Subodh P. Shah, Advocate for the petitioners  
Mr. R. R. Manti, Advocate for respondent sole

.....

**[CORAM : SUNIL P. DESHMUKH, J.]**

**DATE : 15<sup>th</sup> MARCH, 2016**

**ORAL JUDGMENT :**

1. Rule. Rule made returnable forthwith and heard learned advocate for the parties finally with consent.
2. Regular civil suit No.5 of 2005 has been instituted by present respondent - plaintiff initially seeking injunction in respect of property referred to in the plaint, which subsequently underwent change under the amendment sought. An amendment application had been moved at Exhibit-15 by the plaintiff and amendments were sought in paragraph No.3 with respect to description of suit property as well as one more paragraph was sought to be added as paragraph No.3A.
3. Learned advocate for the petitioner submits that while passing the impugned order, the learned judge had been in oblivion of the amendment sought under paragraph No.4 under application Exhibit-15 by adding paragraph No.3A. According to

learned advocate, the contents of the same tantamount to withdrawal of admission given in paragraph No.3 of the original plaint. In such a case, a grave prejudice would be caused to the defendants, wherein admission appearing accepting title of the defendants over the property, by the plaintiff is sought to be withdrawn. According to learned advocate since that would prejudice their accrued rights, the impugned order has been rendered unsustainable in law and in fact. He, in order to support his submissions purports to place reliance on judgment in case of “*Damu Maruti Dadhe and Another V. Limba Maruti Dadhe and Others*” reported in 2011 (5) *Mh.L.J.* 738 as well as in the case of “*Tertuliano Renato De Silva and Another V. Franscisco Lourenco Bettencourt De Silva*” reported in 2002 (2) *Mh.L.J.* 812.

4. On the other hand, Mr. Mantri, learned advocate appearing for the respondent - plaintiff submits that hearing of the suit is getting procrastinated under successive applications being filed before the trial court as well as by filing writ petitions in this court. He refers to quite a few writ petitions and orders therein. He submits that even otherwise no prejudice can be said to have been caused to the defendants, for the reason that, such an eventuality has been taken care of by procedural law, particularly section 105 of the Civil Procedure Code. In his

submission, therefore, it is not a case where the matter requires indulgence of this court by invoking extraordinary powers under the Constitution. He further contends that this is not the first round wherein this application for amendment is concerned before this court. He submits that earlier on there had been a writ petition against rejection of a review of an order passed by the trial court on amendment application. In that round it had not been the submission of the other side with reference to paragraph No.4 and amendment by addition of paragraph No.3A to plaint and that it had not been argued. According to him, may be the same has been resisted in the say, however, one cannot be certain that any submissions have been advanced over the same. He, therefore, submits that taking overall stock of the situation and having regard to section 105 of the Civil Procedure Code, it cannot be said to be a case wherein serious prejudice can be said to have been caused to the defendants.

5. Perusal of the impugned order, particularly reasons, appear to dwell upon other aspects than the amendment as sought under paragraph No.4 by addition of paragraph No.3A to the plaint. In view of the submissions, those have been advanced on behalf of the petitioners that prejudice is likely to be caused to the defendants and that there had been no submission on that

count according to respondents and the impugned order does not reflect upon the same.

6. There does not appear to be serious objection as far as amendment to plaint with regard to amendment to paragraph No.3 of the plaint is concerned.

7. As such, there appears to be dispute to the extent of paragraph No.4 of amendment application.

8. In my estimate, the situation can be resolved by remitting the matter for re-consideration.

9. As such, impugned order dated 29<sup>th</sup> December, 2014 on Exhibit-15 passed by civil judge junior division, Nandurbar is set aside. Application Exhibit-15 is restored. While hearing the case on Exhibit-15, the trial court may have regard to above. The trial court may decide on the application as expeditiously as possible, preferably within a period of four weeks from the date of receipt of writ of this order.

10. Writ petition accordingly stands allowed. Rule is made absolute in aforesaid terms.

**[SUNIL P. DESHMUKH, J.]**