

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO. 720 OF 2016
IN
WRIT PETITION NO. 9959 OF 2014

Shri Sayaji Haibat Bhamre and another.	...	Applicants.
V/s.		
Shri Pralhad Pundlik Bhamre.	...	Respondent.

Anilkumar K. Patil for the applicants.

None for the respondents.

CORAM : D.H.WAGHELA, C.J.

DATE : 27th June 2016.

P.C. :

The applicants, original plaintiffs have filed the present application to recall the order dated 9th October 2015 pursuant to which the original Writ Petition No.9959/2014 is dismissed upon failure of the applicants to serve notice upon the respondent. The applicants also prayed for condonation of delay of 109 days in filing this application. It appears from the record that the original petition was filed under Article 227 of the Constitution to call into question the order dated 7th August 2014 of the learned Second Joint Civil

Judge, (Senior Division), Malegaon rejecting the application for amendment of plaint after the trial had commenced. It is found in the impugned order that the amendment proposed by the applicants was not necessary for determining the real question in controversy and the applicants had failed to prove that in spite of due diligence they could not raise the matter before the commencement of trial. It also appears from the record that by order dated 1st December 2014 passed in main petition, notice was ordered to be issued to the respondent, making it returnable on 5th January 2015 and, in addition to service of notice through Court, the petitioners' advocate was directed to serve a private notice by Registered Post A.D. and/or by courier service and/or by hand delivery and file affidavit of service before the returnable date. The parties were put to notice that in view of the narrow controversy the writ petition would be heard and disposed finally at the stage of admission. Admittedly, the applicants had failed to serve the notice by any of the means permitted by the Court and even the present application is filed after delay of 109 days. Therefore, the prayer of recalling the order dated 9th October 2015 cannot be granted. Accordingly the application is dismissed.

CHIEF JUSTICE