

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

WRIT PETITION STAMP NO.8890 OF 2016

Smt. Ahilyabai Lahu Telam and Anr. : Petitioners.
Versus
Pramod Sadashiv Sonawane : Respondent.

Mr. Sandip D Shinde for the Petitioners.
Mr. Girish R Agrawal for the Respondent.

CORAM : R. M. SAVANT, J.
DATE : 20th April 2016

P.C.

1 The writ jurisdiction of this Court is invoked against the order dated 16/01/2016 passed by the learned 2nd Joint Civil Judge, Senior Division, Nashik by which order the application for amendment of the plaint came to be rejected.

2 The Petitioners have filed the suit in question being Special Civil Suit No.396 of 2013 for declaration and injunction. In the said suit the Petitioners filed the instant application (Exhibit 85) for amendment of the plaint so as to incorporate a line that “the suit is filed under Section 27 of the Limitation Act”. It is required to be noted that the Petitioners' application for temporary injunction came to be rejected by the Trial Court by the order dated 15/07/2015. It seems that the Petitioners had raised the said contention at the time of applying for interim injunction. The said contention was rejected by

the Trial Court on the ground that the said provision would not apply in the facts of the present case. The instant application has been rejected by the Trial Court on the ground that it is always open for the Petitioners to urge the said contention in the suit but that would not give the Petitioners liberty to amend the plaint so as to incorporate the reference to the said provision as and by way of an averment. The Trial Court has also rejected the said application on the ground that the trial has already commenced inasmuch as the affidavit of evidence is to be filed by the Plaintiffs.

3 In my view, the contention based on Section 27 of the Limitation Act pertains to limitation which can always be urged by the Petitioners at the hearing of the suit. In that view of the matter, the order passed by the Trial Court dated 16/01/2016 rejecting the application for amendment cannot be faulted with. No case for interference is therefore made out. The above Writ Petition is accordingly dismissed.

[R.M.SAVANT, J]