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

WRIT PETITION (L) NO. 18137 OF 2016

Ananda Aabaji Dere

...Petitioner

vs

Kisan Baraku Ghule & Ors.

...Respondents

.....

Mr Ramesh Dube Patil i/b Ajay Misar & Co. for the Petitioner
None for the Respondents

.....

CORAM : N.M.JAMDAR, J.

21 SEPTEMBER, 2016

P.C. :

The Petitioner challenges the order passed by the learned Civil Judge, Jr. Dn. Pimpalgaon, directing the Petitioner to carry out the amendment subject to costs of Rs.3000/- to the Respondents. Learned counsel for the Petitioner submitted that the subject matter of the suit is being changed by the amendment as well as the amendment is carried out at the belated stage.

2 As far as the change in nature of suit is concerned, the suit was filed for injunction, a Court Commissioner was appointed and pursuant to the report of the Commissioner the

amendment has been sought. As far as, the delay in carrying out the amendment and the contention of the learned counsel for the Petitioner that the Respondents were aware of the Commissioner's report is concerned, learned Civil Judge has considered that aspect of the matter and has found that the delay can be compensated by imposition of costs and has accordingly imposed costs of Rs.3000/-. The order in the circumstances, is equitable order and it is not the position of law that because there is delay in carry out the amendment, it must be rejected and it is impermissible to grant amendment by imposition of costs.

3 As far as prejudice to the Petitioner is concerned, it will be open to the Petitioner to file additional Written Statement. In the circumstances, no case is made out for interference under the powers of superintendence of this Court. The Writ Petition is, accordingly, rejected. Liberty to the Petitioner to file an additional Written Statement.

(N.M.JAMDAR J.)