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

WRIT PETITION NO. 829 OF 2013

Mr. Suryakant Vasudeo Limkar. ... Petitioner.

V/s.

Mr. Chandrakant Biku Talkar and Ors. ... Respondents.

Mr. Atharva Dandekar i/b. Nitin Mulye for the Petitioner.
None for Respondents.

CORAM : N.M. Jamdar, J.

14 September, 2016.

Oral Order :-

On 5 February 2013 notice was issued to the Respondents putting them to notice that the Petition will be taken up for final disposal at the admission stage. The Respondents are served. The Petition is taken up for final disposal.

2. By the impugned order dated 1 September 2012, the learned Civil Judge has rejected the application for amendment preferred by the Petitioner – Plaintiff.

3. The Petitioner has filed the Suit bearing No.27 of 2003 against the Respondents for removal of encroachment and possession and for other reliefs. An application for amendment was moved on 26 June 2009 which was granted. Therefore, Respondent No.1 appeared in the suit and filed written statement. On 1 August 2011 the learned Civil Judge allowed the application filed by the Petitioner for injunction. An application was moved by the Petitioner below Exhibit 143 for amendment. The application was rejected by the impugned order by the learned Civil Judge.

4. Perusal of the impugned order shows that the learned Judge has primarily rejected the application on the ground that earlier also the Petitioner had sought amendment to the plaint and that there are no sufficient particulars in the application. Both the reasons stated by the learned Judge are not correct. Merely because the applicant had amended the plaint earlier does not mean the Petitioner had lost his right to seek further amendment, if so required. In the application for amendment, the Petitioner has stated that the Respondents have continued to carry on construction. By way of an amendment, a party, who according to the Petitioner had carried on construction needed to be joined and certain other reliefs were sought. The amendment application clearly indicates that what are sought to be brought on record are subsequent events.

5. In the circumstances, the learned Civil Judge was not right in rejecting the application for amendment in its entirety. In spite of the Court notice the Respondents have not appeared to oppose the Petition. In view of what is stated above, the impugned order cannot be sustained and the application for amendment deserves to be allowed. Accordingly, the Writ Petition is allowed by quashing and setting aside the impugned judgment and order dated 1 September 2012. The application filed by the Petitioner below Exhibit 143 in Regular Civil Suit No.27 of 2003 is allowed. Amendment to be carried out within period of four weeks from today.

(N.M. Jamdar, J.)