

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

WRIT PETITION NO. 5064 OF 2017

Dagdu Chandrrao Suryawanshi

..PETITIONER

VERSUS

Mahamod Nurulla Chaudhari and Others

..RESPONDENTS

....

Mr. A.N. Nagargoje, Advocate for petitioner.

Mr. A.S. Yenegure, Advocate for respondents.

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CORAM : M.S. SANKLECHA, J.

DATED : 21st APRIL, 2017

ORDER :

1. Mr. Yenegure, learned Counsel appears for the respondents and undertakes to file his vakalatnama by 24th April, 2017.

2. This petition under Articles 226 and 227 of the Constitution of India challenges the order dated 09th January, 2017 passed by the Joint Civil Judge, Junior Division, Osmanabad.

3. By the impugned order, the petitioner's application for amendment of the plaint was rejected. The impugned order records the fact that proposed application for making amendment to the plaint was sought after commencement of the Trial. Further, the impugned order records the

fact that the plaintiff has not shown that he could not have applied for amendment earlier even after exercising of due diligence. It also records the fact that “by way of amendment plaintiff wants to disown the contentions raised by defendants in their W.S.”.

4. Mr. Nagargoje, learned Counsel for the petitioner submits that amendment to the pleadings can be allowed at any stage of the proceedings if necessary to bring out real issue in dispute. In support, he relies on the decision of this Court in *Rajaram Naik Vs. State of Goa and Others* reported in **2016 (1) Mh.L.J. 770**. However, this Court in *Rajaram Naik* (supra) has categorically stated that the amendment would be allowed only when the Court comes to the conclusion that the party could not have raised the matter before the commencement of the trial inspite of due diligence on his part. In the present facts, the finding recorded in the impugned order is that the plaintiff has not shown that he could not have applied for amendment earlier inspite of due diligence.

5. In the above view, the impugned order passed does not warrant interference in exercise of my supervisory jurisdiction under Article 227 of the Constitution of India. In the result, the petition is dismissed.

(M.S. SANKLECHA, J.)

SSD