

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.3043 OF 2017
(Kadubai Nivrutti Sukale and others Vs. Nivrutti Vitthal Sukale
and others)

Mr.K.R.Doke, Advocate for the petitioners.
Mr.V.S.Undre, Advocate for respondent No.5.
Mr.Sharad S.Shinde, Advocate for respondent Nos. 2 to 4.

(CORAM : Ravindra V.Ghuge, J.)

DATE : 18/09/2017

PER COURT :

1. The petitioners are aggrieved by the impugned order dated 09/08/2016 by which the Trial Court has rejected application Exh.94 filed by the petitioners/plaintiffs and has declined to grant leave to amend under Order 6 Rule 17 of the CPC.

2. This Court (Coram : S.B.Shukre, J.) while issuing notice for final disposal, stayed the impugned order and restored Exh.94 and directed the Trial Court to decide it. The order dated 15/03/2017 reads as under :-

"1. Heard learned counsel for petitioner. Issue notice for final disposal to respondents, returnable on 30th March, 2017. Mr.Undre, learned counsel waives service of notice for respondent No.5.

2. Meanwhile there shall be stay to the effect and operation of

order dated 09/08/2016 until further orders. It is also directed that with staying the effect of operation of the impugned order, the application viz. Exhibit 94 shall be treated as pending and pendency of this application shall be appropriately considered by the Trial Court."

3. Considering the above and after taking into account the strenuous submissions put forth by Mr.Undre, learned Advocate for respondent No.5 and Mr.Shinde, learned Advocate for respondent Nos. 2 to 4, this petition is allowed in terms of the order dated 15/03/2017. The impugned order dated 09/08/2016 is, therefore, quashed and set aside. The Trial Court shall decide Exh.94 afresh and on its own merits after hearing all the litigating sides, preferably within a period of 3 (three) months. RCS No.68/2010 shall proceed only after Exh.94 is decided.

(Ravindra V.Ghuge, J.)