

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

WRIT PETITION NO. 453 OF 2016

Rayat Shikshan Sanstha,
Karmvir Samadhi Parisar,
Satara,
Through Arvind Sahebrao Burungale
and another

..Petitioners

VERSUS

Shivanand (Bhau) Laxman Potare
and another

..Respondents

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Mr.V.R. Dhorde, Advocate for the petitioners
Mr.R.R. Karpe, Advocate for respondents

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CORAM : S.V. GANGAPURWALA, J.
DATE : APRIL 24, 2017

PER COURT :

Heard.

2. The application filed by the petitioners to amend the pleadings in the suit, has been rejected by the learned trial Judge.

3. Mr.Dhorde, the learned counsel for the petitioners/plaintiffs submits that on 15.01.2016 this court granted the stay to the proceedings in

the suit. He submits that in view of the further constructions carried out by the respondents/defendants, amendment is necessitated. He submits that the trial court, on the premise that the defendants had carried the construction earlier, had refused the amendment, which is illegal.

4. Mr.Karpe, the learned counsel for the respondents submits that the respondents/defendants had carried out the constructions much prior to the filing of the suit. The petitioners were not diligent. The trial has commenced and the examination-in-chief has already been filed. He submits that in absence of due diligence, the application for amendment could not have been considered. He, therefore submitted that the trial court has rightly rejected the application for amendment.

5. I have considered the impugned order passed by the trial Court. No doubt the petitioners have to show due diligence. The case

of the petitioners is that the defendants had carried out the constructions after the applications at Exh-5 was decided, whereas according to the defendants at the time of filing of the suit, the said construction was existed.

6. It is trite that the merits of the application for amendment are not required to be considered at the time of deciding it. It is for the parties to put forth their case. The petitioners have given reasons for not filing the said application earlier. If the amendment application is allowed, it would avoid multiplicity of litigation. However, for the delay caused in filing the said application, the petitioners deserve to be mulct with the costs.

7. In the result, I pass the following order:-

i) The impugned order is quashed and set aside.

ii) The application filed by the petitioners before the trial Court at Exh-42 is allowed, subject to payment of costs of Rs.10,000/- (Ten Thousand) by the petitioners to the defendants. The costs shall be deposited before the trial Court on or before 06.06.2017.

iii) The Writ Petition stands disposed of accordingly. No costs.

[S.V. GANGAPURWALA, J.]

kbp/