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

WRIT PETITION NO. 12147 OF 2016

1. Naresh S/o Ramesh Jaiswal,
age 31 years occupation business
2. Umesh S/o Ramesh Jaiswal,
age 29 years occupation business

Both R/o Panibes, Kadrabad Taluka and Dist. Jalna.

...PETITIONERS

VERSUS

1. Ekbalkhan S/o Mehaboobkhan,
age 61 years occupation business
R/o College road, New Jalna Taluka and Dist. Jalna
2. Anil S/o Narayan Misal,
age 49 years occupation business
R/o Panibes, Kadrabad Taluka and Dist. Jalna.
3. Mehaboobkhan S/o Hidayatkhan,
age 74 years occupation business
R/o College road, New Jalna Taluka and Dist. Jalna.

...RESPONDENTS

Mr S.S. Dixit, Advocate for petitioner

Mr B.R. Kedar and Mr M.V. Kelekar, Advocates for all respondents.

CORAM : NITIN W. SAMBRE, J.

DATE : 11th September, 2017

ORAL ORDER :

In a suit for injunction, the lower Appellate Court remanded the matter back to the Trial Court with liberty to the

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petitioners/plaintiffs to prove the partition deed dated February 28, 2000.

2. The petitioners/plaintiffs then suffered order granting permission to amend the written statement, decided in favour of respondents/defendants, vide order dated June 27, 2016, which is questioned in the present petition on the following grounds :

- (a) the remand order passed by the lower Appellate Court was qualified to the extent of permitting adducing evidence in support of partition deed, and
- (b) the admission given by the defendant cannot be withdrawn.

3. What is required to be noted is, there are powers under the provisions of Code of Civil Procedure to permit party to amend his pleadings, may be a plaint or written statement. The embargo under the provision of Order VI Rule 17 of C.P.C. cannot be read to the detriment to the respondent, as putting an embargo on legal right to amend the written statement after remand of the matter by the Appellate Court. Such prayer for amendment to the written statement is required to be construed liberally.

4. Apart from above, the claim of the petitioners that the respondents will withdraw the admissions given in the written

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statement by way of amendment is premature for the reason that the Trial Court is yet to apply its mind and record finding on the said issue.

5. Apart from above, it cannot be lost sight of the fact that the order of remand is passed at the behest of present petitioners after they moved an application under Order XLI Rule 27 of C.P.C., which was formed to be the basis for remand of the suit to the Trial Court.

6. As such, there is no substance in the petition and the same is dismissed.

(NITIN W. SAMBRE, J.)

pjm