

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION (ST) NO. 13838 OF 2016

Ashok J. Gaikwad and ors. .. Petitioners
vs.
Warana Valley Sahakari Kharedi
Vikri (Sangh) Society Ltd. and anr. .. Respondents

Mr. Bhushan Walimbe for the Petitioners.
Mr. R.A. Naik i/b Mr. Umesh Mankapure for Respondent No.1.
Mr. Rupesh K. Bobade for Respondent No.2.

CORAM : M. S. SONAK, J.
DATE : 06 NOVEMBER 2017.

P.C. :-

- 1] Heard learned counsel for the parties.
- 2] Rule. With the consent of and at the request of learned counsel for the parties, Rule is made returnable forthwith.
- 3] The challenge in this petition is to the order dated 11th March 2016, by which, learned Trial Judge has dismissed the petitioners' (original defendant Nos.1 to 5) application seeking leave to amend the writ statement-cum-counter claim.
- 4] Mr. Walimbe, learned counsel for the petitioners, points out that this application for amendment was filed on 3rd July 2015,

much before, the trial in the suit could commence. After eight months, i.e., 11th March 2016, neither the parties nor their advocates were present, the impugned order was made. The respondents, on the very date, filed a reply opposing the application for amendment.

5] Perused the impugned order and taken note of the circumstances in which the same was made. Rather than go into merits of the matter, the interests of justice will be served if the impugned order is set aside and opportunity is granted to both parties to re-argue the matter on the issue of amendment. Accordingly, the impugned order is set aside.

6] Learned Trial Judge is directed to dispose of the application seeking leave to amend after afford of an opportunity of hearing to both parties. In doing so, learned Trial Judge shall not be influenced by any of the reasons set out in the impugned order, which in any case, is set aside. The application for amendment to be considered on its own merits and in accordance with law.

7] Rule is disposed of in the aforesaid terms. There shall be no order as to costs.

8] All concerned to act on the basis of an authenticated copy of this order.

(M. S. SONAK, J.)