

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.9584 OF 2013

M/s. Chandhere Karpe
Associates through partners

..Petitioners.

Vs

Vatshali Jagdish More and Ors

.. Respondents

Mr.S.N.Chandrachood, Advocate for Petitioners.

Mr. Atul P.Vanarse, Advocate for Respondents no. 1 to 7.

**CORAM : R.G.KETKAR,J.
DATE : 08/02/2017**

PC:

1. Heard Mr.S.N.Chandrachood, learned counsel for the petitioners and Mr.Atul Vanarse, learned counsel for respondents no. 1 to 7 at length. Mr. Chandrachood seeks leave to delete respondent no.8 who is defendant no.2 in the trial Court as respondents no. 1 to 7 being the original plaintiffs are the only contesting respondents. Leave to delete respondent no.8 is granted. Amendment shall be carried out forthwith.

2. By this Petition under Article 227 of the Constitution of India, the petitioners, hereinafter referred to 'defendants no. 1(a) to 1(c), have challenged the Judgment and order dated 30.7.2013 passed by the learned 20th Jt. Civil Judge, Jr. Dn., Pune below Exhibit-91 in Regular Civil Suit no. 989 of 2010. By that order, the learned trial Judge allowed the application filed by the plaintiffs under Order VI, Rule 17 of C.P.C. for amending the

plaint. Rule. Mr. Vanarse waives service on behalf of the respondents. Having regard to narrow controversy as also at the request and by consent of the parties, Rule is made returnable forthwith and petition is taken up for final hearing.

3. In support of this Petition, Mr. Chandrachood has raised several contentions. One of the contentions raised by Mr Chandrachood is that trial has already commenced on 6.2.2012. On 17.12.2012, the Court passed order to the effect 'no further evidence' against the plaintiffs. By consent of the parties, on 22.1.2013, order dated 17.12.2012 was set aside. It is at that stage the plaintiffs filed application Exhibit-91 on 27.2.2013 under Order VI, Rule 17 of C.P.C. for amending plaint. He submitted that in the impugned order, the learned trial Judge has not at all dealt with the aspect, namely, whether the plaintiffs have satisfied the conditions stipulated in proviso to Order VI, Rule 17 of C.P.C

4. Mr. Vanarse could not point out this aspect in the impugned order. He, therefore, submits that by consent, impugned order may be set aside and the learned trial Judge may be directed to dispose of the application Exhibit-91 de-novo in a time bound manner. He further states that the next date of hearing before the trial Court is 9.3.2017. Parties assure that they will appear before the trial Court on 9.3.2017 and for that purpose no fresh notice be issued to them.

5. In view thereof, by consent of the parties, Petition is disposed of in the following terms.

(i) Impugned order dated 30.7.2013 is set aside. Application Exhibit-91 is restored to the file of the learned trial Judge for deciding it afresh.

(ii) Parties agree that they will appear before the trial Court on 9.3.2017 and for that purpose no fresh notice be issued to them. The learned trial Judge will decide the application as expeditiously as possible and preferably within four weeks from the date of appearance of the parties. All contentions of the parties on merits are expressly kept open.

(iii) Rule is made absolute in the aforesaid terms with no order as to costs.

(R.G.KETKAR, J.)