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

WRIT PETITION NO.13483 OF 2017

Navneet Textiles & Anr	...	Petitioners
V/s.		
M/s Dhullam Textiles Pvt. Ltd	...	Respondents

Mr. B. A. Walimbe with Mr. Priyal G. Sarda,
for the Petitioner
none for the Respondents.

CORAM : DR. SHALINI PHANSALKAR-JOSHI, J.

DATE : 14th DECEMBER, 2017.

P.C. :

- 1] Heard learned counsel for the petitioners.
- 2] By this petition, the petitioners are challenging the order dated 2nd August, 2017, passed by the District Judge 4, Solapur in Regular Civil Appeal No.181 of 2015 below Application Exh.17. The said application was filed by the respondent-plaintiff under Order VI Rule 17 of Code of Civil Procedure for leave to amend the cause title of the plaint as, "Shri. Anil Dattatraya Dhullam, Proprietor of M/s Dhullam Textile Pvt. Ltd", which was previously mentioned as "Dhullam Textile Private Ltd through Proprietor Anil Dattatray Dhullam".

3] The submission of learned counsel for the petitioners is that at the time of hearing the arguments of the appeal, in the year 2017 the petitioners are seeking this amendment, at the very belated stage finding that suit was not tenable as it was filed by a firm and not in the name of the Partner or Proprietor. It is urged that in the appeal memo itself which was filed in the year 2015, the very first ground raised by the Petitioners was about maintainability of the suit on the count that it was not filed in the name of firm and hence in view of the provisions of Order XXX Rule 10 of Code of Civil Procedure, it is barred.

4] According to learned counsel for the petitioners respondents did not amend the cause title of the plaint immediately after filing of the appeal, but only when the appeal came to be heard finally. It is urged that the defect which was in the cause title cannot be cured at the belated stage especially when it creates certain rights in favour of the petitioners. According to learned counsel for the petitioners, therefore, the impugned order passed by the Appellate Court, allowing such amendment at the fag end of the appeal needs to be quashed and set aside.

5] However, the perusal of the impugned order passed by the Appellate Court clearly reveals that the suit proceeded exparte and therefore, only in the appeal for the first time the objection was raised

about the maintainability of the suit on the ground that it cannot be filed in the name of firm in view of provisions of Order XXX Rule 10 of Code of Civil Procedure. It may be true that there was some delay on the part of the respondent in carrying out the said amendment in the cause title. But for this delay, the Appellate Court has awarded costs of Rs.1,000/- to be paid to the petitioners by the respondent.

6] Learned Appellate Court has also considered the fact that the proposed amendment is of the formal nature as it is only in respect of mis-description in the cause title. Respondent has clearly mentioned in the cause title of plaint that he is the Proprietor of M/s Dhullam Textiles and now he is only getting it corrected and bringing his name being Proprietor of M/s Dhullam Textiles Pvt. Ltd.

7] Under such circumstances as the respondent has not come up with new case, nor it will change the nature of suit, it cannot be said that the Appellate Court has committed any error in allowing the said application for amendment.

8] This Writ Petition, therefore, holds no merit, stands dismissed.

[DR. SHALINI PHANSALKAR-JOSHI, J.]