

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

921 WRIT PETITION NO. 13057 OF 2018

IQBALSINGH MAHENDRASINGH DHILLON
VERSUS
ASHWINIBAI BHARAT THENGADE

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Advocate for Petitioner : Mr. Bhandari Anand P.

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CORAM : N.M. JAMDAR, J.

Dated: 29 November 2018

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ORAL ORDER :-

By this petition, the petitioner has challenged the order passed by the learned Civil Judge Junior Division, Khultabad dated 18 September 2018 rejecting the application for amendment moved by the petitioner.

2. Learned counsel for the petitioner relying on the decision of the Apex Court in the case of Sampath Kumar Vs. Ayyakannu and another ¹ submitted that the petitioner, who had moved an application for amendment on the ground that he was dispossessed and that there is no dispute that the petitioner can institute a separate suit seeking to recover the possession he should have been given leave to amend the

¹ (2003) 1 AIC 65.

plaint. He has submitted that there is no prejudice to the respondents, if such leave is granted and that the right of the petitioner to pray for restoration of possession in this suit is lost.

3. The stage of the suit is that it is for final hearing. In view of the legislative changes and the policy of grant of leave to amend the pleadings cannot be liberal. A duty is casted on the one who seeks to amend the pleadings at belated stages to demonstrate due diligence and such application should not be moved for the purpose of postponement of trial. A method litigants adopt, because of such various changes in law to curtail time in disposal of the civil suits, were brought about. The learned judge has observed that the application was not bonafide and since the petitioner invokes the power of superintendence, this factor becomes more material.

3. The suit instituted in the year 2012. On 5 January 2018 the respondents/defendants filed affidavit of evidence, thereafter, matter was posted for cross examination. On 9 February 2018, 16 March 2018 and 31 March 2018 matter was adjourned on the request of the petitioner to give further opportunity to cross examine finally, the respondents filed an application to pass 'no cross' order. On this

application also the petitioner took time to file reply. It is at this stage, the petitioner moved an application for amendment on 6 April 2018. By this amendment, the petitioner sought the following avements to be incorporated in the plaint

“After filing of the suit and rejection of temporary injunction application, in the month of January 2018, defendants dispossessed the plaintiff from the suit plaintiff and made their possession, and therefore, the decree for possession required to be passed, directing the defendants to deliver the possession of the suit land to the plaintiff.”
Absolutely no particulars whatsoever.

4. Thus, the petitioner wanted to include the pleadings that sometime in the month of January 2018 defendant dispossessed the plaintiff. Neither the application nor the avements give any particulars whatsoever. Thereafter three months, suit appeared on three four dates, but no such mention was made. The learned Judge in this context was right in concluding that the application was not bonafide and it was moved only with the reason to prolong the trial. In a given case, lenient view can be taken and amendment can be permitted, but ultimately exercise of discretion will depend on facts of present case. In the present case, discretion used by the learned Civil Judge and the observations made by the learned Civil Judge that the application cannot be permitted at this stage, is correct and warrants

no interference. Writ petition is accordingly rejected.

(N.M. JAMDAR, J.)

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