

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

WRIT PETITION NO.7065 OF 2016

Mr. Subhash Shankarrao Jadhavar & Ors.	...Petitioners
V/s.	
Mr. Bhagwat Babasha Bhalerao	Respondent

Mr. D.S. Mhaispurkar for the Petitioners.

None for the Respondent.

CORAM : M.S. SONAK, J.

DATE : 1st MARCH, 2018

P.C.

1. Heard the learned counsel for the petitioners.
2. The challenge in this petition is to the order dated 02.05.2016 by which the learned Trial Court has permitted the respondent-plaintiff to amend the plaint.
3. Mr. Mhaispurkar, the learned counsel for the petitioners submits that the amendment applied for was malafide. He points out that this is not a case of any subsequent event. He points out that false statements have made in the text of the proposed amendment. He points out that the plaintiff was very much present at the site of inspection and now it is stated as if he was not present. For all these reasons, petitioners did not raise any issue at the relevant time. The

issues are now sought to be raised. Mr. Mhaispurkar submits that the plaintiff is trying to change the nature of the suit. For all these reasons, Mr. Mhaispurkar submits that the impugned order may be liable to be set aside.

4. Upon perusal of the impugned order, it is seen that this was a pre-trial amendment, which was applied for. The issue as to whether the grounds set out in the text of the proposed amendment is correct or not is not required to be examined at this stage. Ultimately, even after the amendment is allowed, the petitioner will be allowed to file an additional written statement and contest such averments. In all cases, it is not necessary that leave to amend can be granted only in respect of subsequent event. In case of pre-trial amendment, the approach is substantially liberal. The learned Trial Judge has held that the proposed amendment is clarificatory. From the perusal of the text of the amendment, it cannot be said that there is any change or in any case any fundamental change in the nature of the suit.

5. Taking into consideration the aforesaid, it cannot be said that the impugned order is vitiated on any jurisdictional error or unreasonable approach. Accordingly, no case is made out to interfere with the impugned order. This petition is therefore dismissed. There shall be however, no order as to costs.

6. The petitioners, however be entitled to file an additional written statement within a period of four weeks upon the service of amended copy of the plaint.

7. At this stage, the learned counsel for the petitioners seeks for extension of ad-interim order by a period of four weeks from today. The ad-interim order is extended by a period of four weeks from today.

(M.S. SONAK, J.)