

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

WRIT PETITION NO. 13145 OF 2017

Subhash Veerbhadra Lohar V/s. Smt.Nasimunnisa Asif Kazi (Since decd.) Through LRs. & Ors.	...	Petitioner Respondents
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- Ms.Shruti Tulpule for the Petitioner.
- Mr.Rahul B. Vijaymane i/b. Mr.Shrishail Sakhare for Respondent No.1(B).

CORAM : DR.SHALINI PHANSALKAR-JOSHI, J.

DATE : 10th APRIL, 2018.

P.C. :

1] Heard learned counsel for the Petitioner and learned counsel for Respondent No.1(B).

2] By this Writ Petition, filed under Article 227 of the Constitution of India, the Petitioner is challenging the order dated 8th June 2017 passed by the District Judge-3, Solapur, below the application at Exhibit-24 in Civil Appeal No.357 of 2012.

3] The application at Exhibit-24 was filed by the present Petitioner, who is the original plaintiff and the appellant before the Appellate Court. He has filed the suit for cancellation of sale-deed, for

declaration of ownership by way of adverse possession and for perpetual injunction claiming to be in possession of the said property. After the suit came to be dismissed, in the appeal, he filed this application for amendment of the plaint under Order-6 Rule-17 of the Code of Civil Procedure, when the appeal came for hearing before the Appellate Court.

4] It may be stated that, the suit was filed in the year 2007. It came to be dismissed on 30th March 2010. During the *pendency* of the suit such amendment was not asked for. Even after the filing of the appeal and during its *pendency* the amendment application was not filed. Only when Appeal came up for final hearing, the application was filed. Therefore, already more than inordinate delay has occurred in filing such application for amendment.

5] Moreover, as rightly held by the Appellate Court, the proposed amendment is definitely going to change the nature of the suit. Earlier the Petitioner has stated that, he was in permissive possession of the suit property and now by way of amendment, the Petitioner wants to contend that, he is in possession without any authority and without paying any heed to the objection of the landlord.

6] Thus, the Appellate Court has rightly held that, the stand which is now being taken by the Petitioner being contrary to the stand which was taken in the suit and on the basis of which the suit came to be dismissed, the Petitioner cannot be permitted to change such stand at the stage of the appeal, as it is going to cause prejudice to the Respondent in his defence.

7] The impugned order therefore passed by the Appellate Court rejecting this application for amendment does not call for any interference. Writ Petition therefore being without merit, stands dismissed.

[DR.SHALINI PHANSALKAR-JOSHI, J.]