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

8 WRIT PETITION NO.7466 OF 2018

SUNIL NARAYAN PATIL AND ANOTHER
VERSUS
VIJAYA SUSHILABAI BIRPANKAR AND OTHERS

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Advocate for Petitioners : Mr. Kulkarni Mukul S.
Advocate for Respondent No.1 : Mr. Ashutosh S. Kulkarni

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**CORAM : P.R. BORA, J.
DATED : 08th JULY, 2019.**

PER COURT:-

. Heard finally with consent of the learned counsel appearing for the parties.

2. The order dated 09.01.2018 passed by the 9th Civil Judge, Junior Division, Jalgaon below application Exhibit-134 in R.C.S. No.79 of 2012 is challenged in the present writ petition. The petitioners are original defendant nos. 4 and 5 in the aforesaid civil suit. The application at Exhibit-134 was filed by present respondent no.1, who is the original plaintiff seeking permission to carry out the amendment in the plaint which was allowed vide order passed by the Court on 13.12.2011. The application was admittedly filed on 29.12.2015 i.e. after the lapse of more than four years. The application was opposed by the

defendants. The learned Trial Court, however, deem it appropriate to allow the application subject to cost of Rs.3,000/-. Aggrieved by, original defendant nos.4 and 5 have preferred the present writ petition.

3. Shri Mukul Kulkarni, the learned counsel appearing for the petitioners referring to the provisions under Order VI Rule 18 read with Section 148 of the Code of Civil Procedure submitted that, having regard to the provisions as aforesaid, the impugned order is apparently unsustainable. The learned counsel relying on the judgment of the Hon'ble Delhi High Court in the case of **"Glaxo Smithkline Consumer Healthcare Vs. Anchor Health and Beautycare, 2009 SCC Online Del 1899"**, submitted that unless the application is preferred for condonation of delay and unless the delay is specifically condoned, the Trial Court could not have permitted the plaintiffs to carry out amendment in the plaint. The learned counsel in the circumstances, prayed for setting aside the impugned order.

4. Shri Ashutosh Kulkarni, the learned counsel appearing for respondent No.1 supported the impugned order. The learned counsel placed reliance on the following judgments:

1. Ram Das Vs. Ganga Das, AIR 1961 SC 882.
2. Prem Narain Vs. Vishnu Exchange Charitable Trust and Ors, AIR 1984 SC 1896.
3. Bhagat Ram Vs. Khekha Ram, 1988()PLJR 26.
4. Gurmeet Singh Grewal Vs. J.P. Jethera, (2010) 15 SCC 549.
5. Nashik Municipal Corporation Vs. R.M. Bhandari and Ors, AIR 2016 SC 1090.
6. L.P. Jain Vs. Nandakumar R. Taliwalla, AIR 1961 Bom 254.
7. Bachhraj Factories Pvt. Ltd. Vs. Paramsukkhadas and Ors, AIR 1993 Bom 175.
8. Ignatius Tony Pereira Vs. Travel Corporation (India) Pvt. Ltd., 2013 (3) Mh.L.J. 406.

5. The emphasis of the learned counsel was on the issue that the order passed by the Trial Court was well within its discretion and once the said Court has exercised the said discretion in favour of the respondents, unless the same is held to have been arbitrarily exercised, this Court shall not cause interference in the said order. The learned counsel further submitted that non-filing of an application for condonation of delay was a procedural lapse on part of the respondents and on that account, the respondents

cannot be deprived of the order which was passed in their favour permitting them to amend the plaint. The learned counsel, therefore, prayed for dismissal of the petition.

6. I have duly considered the submissions advanced by the learned counsel appearing for the respective parties. It is not in dispute that the amendment application at Exhibit-122 was allowed by the Trial Court on 13.12.2011 but the amendment was not carried out till 29.12.2015. The application came to be filed seeking permission to amend the written statement only on 29.12.2015. It is the matter of record that the application was opposed by the defendants by relying on the provisions of Order VI rule 18 as well as under Section 148 of the Code of Civil Procedure. Learned counsel Shri Mukul Kulkarni was assertive on the issue that though, there cannot be a quarrel on the inherent powers of the Court to condone the delay in appropriate matters, unless such application is filed no such discretion can be exercised. It was therefore his contention that without any application for condonation of delay, the delay could not have been condoned by the Trial Court. The learned counsel also pointed out that the judgments which are relied upon by respondents are of the period prior to amendment in Section 148.

7. In the case of "**Salmona Villa Co-operative Housing Society Ltd Vs. Mary Fernandes and Ors, (1997) 1 Mh.L.J. 6**", the Trial Court had rejected the chamber summons taken out for carrying out the amendment on the ground that it was not carried out within the stipulated period. While setting aside the said order, this Court had held as under:

"5. In my view, since the amendment has been allowed by the Court below holding that such amendment was necessary to decide real controversy between the parties because of some inaction in not carrying out amendment within time, the Plaintiff should not be deprived of the amended pleading. The inconvenience caused to Defendant 1(b) could be compensated by awarding suitable cost. The trial Court is expected always to exercise the discretion which advances the causes of justice and does not lead to avoidable litigation by way of revision and appeal. The procedural law should not be applied so rigorously and with hypertechnical stress that it breaks the strings of substantial justice. After all procedure is handmaid of justice and not its master. The amendment was allowed on 8-3-1996 and time was granted by the trial Court to amend the pleadings by 24-4-1996. I have already set-out few dates subsequent thereto by which the amendment was not carried-out, but the conduct of the Plaintiff cannot be said to be so contumacious and gross, negligent or actuated with ulterior motive warranting rejection of chamber summons for extension of time in submitting

amended plaint. Exercise of discretion by the trial Court, therefore, cannot be said to be in accordance with sound legal principles.

8. In the instant matter also, it does not appear to be the case of the respondents that there was any malafide intention in not carrying out the amendment within the given time. As has been observed by this Court in the case of 'Salmona Villa' (cited supra), the procedural law should not be applied so rigorously and with hypertechnical stress that it breaks the strings of substantial justice. Moreover, in the present matter, the Trial Court has exercised the discretion in favour of the plaintiff and has permitted the plaintiff to carry out the amendment. The Court has thus impliedly condoned the delay which had occurred in carrying out the said amendment. I do not see any reason to cause interference in the discretion exercised by the Trial Court which advanced the cause of justice. The writ petition, therefore, fails and is accordingly dismissed, however, without any order as to cost.

(P.R. BORA, J.)