

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

2 WRIT PETITION NO.6800 OF 2018

DEVIDAS NANASAHEB CHAUDHARI AND OTHERS
VERSUS
DATTA KAUTIKRAO AMBHURE

...
Advocate for Petitioners : Shri M.S.Kulkarni h/f.
Shri Mahesh B. Ubale
Advocate for Respondent : Shri Milind M. Patil

...
CORAM : P.R.BORA, J.
DATE: 24th June, 2019

PER COURT:-

1. With the consent of learned Counsel appearing for the parties, the petition is heard finally.
2. The order dated 19.04.2018, passed below application Exh.75 by Joint Civil Judge, Junior Division, Jintur, in Regular Civil Suit No.105 of 2014, is challenged in the present petition. The aforesaid application was filed by the petitioners, who are the defendants in the said Suit seeking amendment in their written statement by invoking the provisions under Order VI Rule 17 of the Code of Civil Procedure. It was the contention of the petitioners in the said application that some inadvertent mistakes and clerical, typographical errors had occurred in the written statement earlier filed by them and permission was therefore sought to correct the said mistakes. The application was opposed by the respondent, who is original plaintiff in the

said Suit. It was the contention of the respondent that by seeking amendment in the written statement vide the said application, the petitioners were attempting to withdraw the admissions given by them in their earlier written statement and it was not permissible. The learned Trial Court, after having considered the submissions advanced by the respective parties, rejected the said application vide the impugned order. Aggrieved thereby, as noted herein above, the petitioners have preferred the present petition.

3. Shri M.S.Kulkarni, learned Counsel appearing for the petitioners submitted that the Trial Court has failed in appreciating that by seeking amendment in their written statement, the petitioners were not attempting to withdraw the admissions given by them in their earlier written statement, but it was an attempt on their part to explain the situation. The learned Counsel submitted that had it been the case that the fact which has been pleaded by the respondent - plaintiff in his plaint is admitted by the petitioners in the earlier written statement and if subsequently the amendment is sought to withdraw the said admissions or to replace the said portion by incorporating new portion, it was certainly not permissible. The learned Counsel submitted that by filing an application seeking amendment, the petitioners were trying to explain their defence

and to remove the clerical mistakes, which had occurred at the time of filing of the earlier written statement.

4. I have perused the plaint, the written statement earlier filed by the petitioners, the application filed by the petitioners seeking the amendment in their written statement, the say filed to the said application by the respondent and the order passed by the learned Trial Court. The application submitted by the petitioners was opposed by the respondent on a specific ground that it was an attempt to withdraw the admission given in the earlier written statement to the effect that the cart-way was available from the common embankment of Gut Nos.22 and 37.

5. While appreciating the objection raised as aforesaid by the respondent – plaintiff, it has to be seen whether same was the case of the respondent – plaintiff that there was a cart-way from common embankment of Gut Nos.22 and 37 and had it been so, it could have been certainly said that seeking amendment to the effect that the cart-way was available from near common embankment of Gut Nos.22 and 37 was amounting to withdraw admission of the fact given in the earlier written statement. However, this does not appear to be the case. It is the contention of the respondent – plaintiff that there is a cart-way from Gut Nos.22 for entering into his field. In the circumstances,

it does not appear to me that there is any reason for not allowing the petitioners - defendants to carry out the amendment in paragraph No.4 of their written statement. However, in so far as the amendment sought in the pleadings made in paragraph No.5 of the written statement is concerned, the objection raised by the respondent - plaintiff has to be sustained. The contents as are sought to be incorporated by way of amendment must have been raised in the previous written statement since all those facts were quite within the knowledge of the petitioners - defendants. The amendment sought in paragraph No.5 of the written statement, therefore, cannot be permitted. In the result, the following order is passed:-

ORDER

- I) The petition is partly allowed.
- II) The amendment sought by the petitioners in their written statement in paragraph No.4, as has been mentioned in the application, is allowed.
- III) The request to amend paragraph No.5 of the written statement, however, stands rejected.

(P.R.BORA)
JUDGE