

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

WRIT PETITION NO.7303 OF 2019

SUNANDA SUNIL JADHAV
VERSUS
RAMESH DAGDUJI JADHAV AND ORS

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Advocate for the Petitioner : Shri Patil Hanmant V.

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CORAM: RAVINDRA V. GHUGE, J.

DATE :- 18th June, 2019

Per Court:

1 The petitioner/ original plaintiff is aggrieved by the order dated 12.04.2019 passed by the Trial Court by which, the application exhibit 88 filed by defendant no.1 seeking an amendment to paragraph 33 of the written statement in Special Civil Suit No.100/2016, has been allowed by imposing costs.

2 The learned advocate for the petitioner has strenuously criticized the impugned order and submits that the nature of the cause of action would be altered if the impugned order is sustained. He further submits that the shop, which the defendants have included in the pending dispute, was within the knowledge of the defendants. No prayer was put forth in the written statement. There are no reasons assigned in exhibit 88 as to what were the circumstances that prevented the defendants from

raising the issue as is now sought to be raised by amending paragraph 33. It is further stated that the petitioner/ plaintiff has already entered an affidavit in lieu of examination in chief before the Trial Court.

3 I find from the petition paper book and especially the application exhibit 88 that the defendants have brought it to the notice of the Trial Court that the suit shop no.2, which is a part of the suit property, is actually owned by the Municipal Corporation and the defendants had obtained the same on lease. The lease of the said shop has been transferred by the Municipal Corporation to defendant nos.8 and 9. The plaintiff cannot support the claim with regard to the said shop without adding the Municipal Corporation as a defendant.

4 In the above backdrop, the said defendants moved exhibit 88 seeking leave to raise an objection that the suit would not be maintainable on account of the plaintiff having failed in impleading the Municipal Corporation as a necessary defendant or a proper party.

5 It cannot be ignored that the suit is of 2016 and it is not too late to permit an amendment to the written statement. It is settled position of law that an amendment to the written statement is to be considered more liberally and the parameters made applicable to the amendment to the plaint would not be strictly applicable while considering such an application. Since the Trial Court was convinced that the amendment could be permitted at this stage, it has allowed the

application and imposed costs of Rs.500/-.

6 I do not find that the amendment sought by the defendants would change the nature of the cause of action or introduce a new cause. The defendants have merely sought an amendment to raise a ground that the suit would be rendered untenable for non-joinder of parties.

7 Considering the above, I do not find that the impugned order could be termed as being perverse or erroneous. This Writ Petition, being devoid of merit, is, therefore, dismissed.

8 The learned advocate for the petitioner/ plaintiff prays for an expeditious disposal of the pending suit. I am unable to accede to his request keeping in view that the suit has been filed in 2016 and it would be unfair to the pending cases to pass an order directing the Trial Court to decide the suit out of turn within a particular time frame when the suit is merely three years old.

9 At this juncture, the learned advocate for the petitioner prays for liberty to file an application before the Trial Court for expediting the suit. As such, if such an application is filed by the petitioner, the Trial Court would consider the same on its own merits.