

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

WRIT PETITION NO. 8837 OF 2019

**SAYYED FARUQ MEHMOOD INAMDAR
VERSUS
SUNITA SIDRAM KURLE AND OTHERS**

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Advocate for the Petitioner : Shri A. A. Khande
AGP for Respondent Nos. 3 and 4 : Shri S. P. Tiwari

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CORAM : RAVINDRA V. GHUGE, J.

DATED : 23rd JULY, 2019.

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PER COURT :

1. The petitioner original defendant No. 3A in RCS No. 224/2012 (old No. 760/2006) is aggrieved by the order dated 07/03/2019 passed by the Trial Court, allowing application Exhibit 139 filed by the plaintiff seeking addition of parties under Order I Rule 10 of the Code of Civil Procedure.

2. The grievance is that one Sayyed Maqdoom Nizamoddin Inamdar was one of the original vendor alongwith defendant Nos. 3 to 6. The said Sayyed Maqdoom passed away on 16/05/2003. The suit was filed in 2006. The L.Rs. of deceased Maqdoom were not brought on record by the

plaintiff. The petitioner specifically raised an objection that the suit suffers from non joinder of parties and should be dismissed. An issue has also been cast as regards non joinder of parties. Recording of oral evidence has still not commenced in the suit, though it is 13 years old. Only with the intention of overcoming the objections raised by the petitioner and other defendants and in the light of the issues cast, the plaintiff preferred Exhibit 139 on 25/01/2019. A vague pleading has been put forth and due diligence is not explained.

3. The learned Advocate for the petitioner draws my attention to the various grounds formulated in the memo of the petition for challenging the impugned order.

4. The record reveals that recording of oral evidence is yet to be commenced. The issue as to whether the suit is bad for non joinder of necessary parties has been cast. If the plaintiff does not add the L.Rs. of deceased Maqdoom, the suit is bound to suffer on account of this deficiency.

5. In this backdrop, the issue is as to whether the Court

should wait for the dismissal of the suit by declining leave to add the L.Rs. or whether the endeavour of the Court should be to avoid the dismissal of a suit for such technical reasons. In my view, in such matters the Court should adopt a pragmatic approach rather than taking a pedantic view.

6. In the matter of *Orion Ropes Pvt, Ltd. Vs. Yogesh Namdeo Mane and Ors., W.P. No. 7184/2012, decided on 04/09/2012 (Aurangabad Bench)* , the Management had raised certain objections in the ULP complaint before the Industrial Court at Dhule. Considering the objections, the complaint would have suffered an adverse verdict. After the pleadings were complete and on noticing the objections which would have adversely affected the case, the workers sought an amendment to overcome such objections, which amendment was allowed. In the Writ Petition preferred by the petitioner Management, this Court concluded that if a deficiency can be cured before it is too late, the Court should permit such an amendment so as to avoid multiplicity of litigation.

7. In view of the above, this petition being devoid of merit

is, therefore, dismissed.

8. I, however, find it appropriate to record that if any issue of limitation on account of the addition of the L.Rs. of deceased Maqdoom, the petitioner or any other litigant is at liberty to raise the said issue before the Trial Court and the Trial Court would consider as to whether an issue with regard to such aspect needs to be framed.

9. As the suit is about 13 years old, I deem it appropriate to direct the Trial Court to decide the said suit as expeditiously as possible and in any case on or before 31/01/2020.

(RAVINDRA V. GHUGE, J.)

shp/-