

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.1418 OF 2014

Vitthal Tukaram Hase and Ors. ... Petitioners
V/s.
Chandrakant Krishna Patil and Ors. ... Respondents

Mr. S.P. Thorat, for the Petitioners

CORAM: K.K. TATED, J.

DATED : JANUARY 11, 2019

P.C. :

1. Heard learned counsel for the Petitioners.
2. The Respondents are duly served but no one appeared on behalf of them when the matter was called out.
3. This Court by an order dated 10th February, 2014 issued notice to the Respondents stating that the matter will be heard and finally decided at the stage of admission itself.
4. By this Petition under Article 227 of the Constitution of India, the Petitioners are challenging the order dated 28th February, 2013 passed by the Civil Judge, Kalyan rejecting their application below Exhibit 30 for carrying out amendment in the Plaint in Regular Civil Suit No. 459 of 2011 on the ground that the application filed by the Petitioners for amendment was without any verification.

5. The learned counsel for the Petitioners submit that Petitioners/ original Plaintiff filed their application for amendment of the Plaint on 9th August, 2012. He submits that along with the said application, the Petitioners also filed affidavit dated 9th August, 2012 of the Plaintiff in respect of the application below Exhibit 30. Thereafter, there is no question of any verification of the Application. He submits that these facts were not considered by the trial Court. Hence, order of the trial Court is liable to be set aside and the Petitioners' application (Exhibit 30) be decided on its own merits.

6. Considering the submissions made by the learned counsel for the Petitioners, averments made in the application below Exhibit 30 and the affidavit of the Petitioner in respect of the application for carrying out the amendment in the Plaint (Exhibit 31), I satisfy that the trial Court failed to consider the Petitioners' application on its own merits. The Exhibit 31 on page 41 clearly shows that the Petitioners have filed affidavit in respect of their application. In view of these fact, I satisfy that the Petitioners made out case for allowing this Writ Petition. Hence, following order.

(a) Order dated 28th February, 2013 passed by the Civil Judge (J.D.), Kalyan below Exhibit 30 in Regular Civil Suit No. 459 of 2011 is set aside.

(b) The learned Civil Judge, Kalyan is directed to decide the Petitioners' application below Exhibit 30 for carrying out

amendment in the Complaint in Regular Civil Suit No. 459 of 2011 on its own merits, after hearing both the sides.

7. Writ Petition stands disposed of accordingly.

8. No order as to the costs.

(K. K. TATED, J.)