

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.3871 OF 2019

Suvarna Prakash Patil and Ors.

...Petitioners

vs.

Bohasanwasi Shri Akshar Purushottam

Swaminarayan Sanstha and Ors.

...Respondents

Mr. B.G. Ligade, for the Petitioners

Mr. Harjit Singh Anand I/b. Legal Chartered, for the Respondent
No. 1 – Original Plaintiff.

CORAM : M. S. SONAK, J.

DATE : APRIL 03, 2019

JUDGMENT

. Heard Mr. Ligade, learned counsel for the Petitioners
and Mr. Harjit Singh Anand, learned counsel for Respondent No. 1
– Original Plaintiff.

2. Mr. Ligade submits that the presence of Respondent
Nos. 2 to 7 is not necessary, since they were the Defendants in the
suit along with the Petitioners.

3. The challenge in this Petition is to the order dated 22nd
October, 2018 by which the learned trial Judge has dismissed the
Petitioners' application for extension of time to carry out the
amendment to his written statement and counter claim.

4. The record indicates that the Petitioners were granted

leave to amend the written statement and counter claim, however, it is submitted that the Petitioners were not aware of this order which was made. The Petitioners as well as the Respondents had filed no less than 4-5 applications in relation to some other issues which arose in the suit. Mr. Ligade submits that on account of this, the amendment remained to be actually carried out in the written statement and counter claim. He submits that no prejudice will cause to Respondent No. 1 if the amendment is permitted to be carried out by extending of time. He submits that the prejudice can always be compensated in terms of costs.

5. Mr. Singh, learned counsel for the Respondent No. 1 submits that delay in the present case is *malafide* and in order to protract the proceeding in the suit. He submits that several opportunities granted to the Petitioners but the Petitioners failed to carry out the amendment. He submits that the impugned order is correct and this Petition will be dismissed with exemplary costs.

6. On perusal of the impugned order, it does appear that the Petitioners were not as diligent as were expected. However, the fact remains that the Petitioners were already allowed to file written statement/ counter claim. The explanation offered does not smacks of malafide as suggested by Mr. Singh. At the highest it is

a case of lack of diligence. The prejudice in such a matter can always be compensated by way of costs.

7. For the aforesaid reasons, the impugned order dated 22nd October, 2018 is hereby set aside.

8. The Petitioners are granted extension of time to carry out the amendment to their written statement / counter claim. Such amendment to be carried out within a period of two weeks from today.

9. The aforesaid relief is however subject to the Petitioners paying costs of Rs. 10,000/- to Respondent No. 1 within a period of ten days from today.

10. If there is any difficulty in payment of costs, the same may be deposited before the learned trial Court within ten days. Thereafter, the Respondent No. 1 is at liberty to withdraw the same unconditionally. If there is failure to pay the costs then this Petition will be dismissed with costs of Rs. 10,000/-.

11. Rule is made absolute in the aforesaid terms.

12. All concerned to act on the basis of authenticated copy of this order.

(M. S. SONAK, J.)