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

***CIVIL APPELLATE JURISDICTION***

***WRIT PETITION NO.6436 OF 2017***

Amarnath Ramshankar Pandey & Anr.

..Petitioners.

V/s.

Smt. Indumati Madhukar Toshniwal & Ors.

..Respondents.

Mr.Sugandh B.Deshmukh for the petitioners.

Mr.Satyajeet P.Dighe for respondent Nos. 1& 2.

***CORAM : M.S.SONAK, J.***

***DATE : MARCH 19, 2019***

**ORAL JUDGMENT**

Heard Mr.Deshmukh, learned counsel for the petitioners and Mr.Dighe, learned counsel for respondent Nos.1 and 2.

2. Challenge in this petition to the order dated February 6, 2017 by which learned Appeal Court has allowed to amend the plaint during the pendency of the appeal.

3. Mr.Deshmukh, learned counsel for the petitioners submit that the Appeal Court should not have permitted the respondents to amend the plaint as the suit is already dismissed. He submits that in

any case, the respondents have not been diligent in the matter. The registered sale deed in favour of the petitioners was executed some time in the year 2014 and this amendment to the plaint was filed only in the year 2016. For these reasons, Mr.Deshmukh submits that the impugned order warrants interference.

4. Mr.Dighe, learned counsel for the respondents defends the impugned order on the basis of reasoning reflected therein.

5. The record reveals that after the suit was dismissed, the respondents instituted an appeal. The appeal is continuation of the suit. During pendency of the appeal, the original defendants transferred the suit property in favour of the petitioners herein. This was a subsequent event and the petitioners applied for leave to amend the plaint in order to place on record the subsequent events and also to seek certain reliefs in relation to the sale deed with the petitioners.

6. Since, this was a case of subsequent development which took place during the pendency of the appeal, it cannot be said that the impugned order suffers from any jurisdictional error. No doubt, some costs was required to be awarded in favour of the petitioners, but not awarding the same is not a ground to set aside the impugned order. In this proceedings, costs can be awarded the

petitioners.

7. Accordingly, the petition is disposed of without interfering with the impugned order but directing the respondents to pay costs of Rs.5,000/- to the petitioners within a period of two weeks from the date this order is uploaded on the website.

8. The petition is disposed of in the aforesaid terms with costs.

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

*(M.S.SONAK, J.)*