

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.5020 OF 2019

Suresh Shripad Thigale and Anr. ...Petitioners
vs.
Shashank Chandrakant Nanaware and Ors. ...Respondents

Mr. Avinash Patil, for the Petitioners
None for the Respondents

CORAM : M. S. SONAK, J.

DATE : APRIL 25, 2019

P.C.:

- . Heard Mr. Avinash Patil, learned counsel for the Petitioners.
2. The challenge in this Petition is to the order dated 20th March, 2019 by which the learned trial Judge rejected the Petitioner's application (Exhibit 82) seeking leave to amend the written statement.
3. Admittedly, this application was taken out after the commencement of the trial in the suit. In the application seeking amendment which was made on behalf of the Defendant Nos. 2A and 2B, all that is stated is that it was in the exclusive knowledge of Defendant No. 2D remained to be filed by Defendant No. 2A. The aforesaid explanation does not amount to due diligence. Mr. Patil, learned counsel for the Petitioners stated that Order 6 Rule 17 of

Code of Civil Procedure fairly provides that no application for amendment shall be allowed after the trial commenced unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial.

4. Mr. Patil points out that the Defendant No. 2D changed his advocate. He poses himself to question that if a party has given proper instructions to his previous advocate but his previous advocate has not filed a proper written statement, what a party to do in such a situation. It is for the learned counsel for the Petitioner to seek answer to this question which he has posed. However, the fact remains that the application seeking leave to amend was made on behalf of Defendant Nos. 2A and 2D. It is only the Defendant No. 2D who has changed his advocate. In any case, this is not the reason in the application seeking leave to amend to explain the due diligence. Even if such reason would hardly constituted any due diligence on the part of the Petitioners.

5. Since, there is no explanation as to why the Petitioners' could not have amended their written statement. Before the

commencement of trial, it cannot be said that there is no error in the view taken by the learned trial Judge.

6. This Petition is therefore liable to be dismissed and is hereby dismissed.

7. There shall be no order as to costs.

(M. S. SONAK, J.)