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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.1071 OF 2017

Bhaskar Shivra More & Ors.

..Petitioners.

V/s.

Sadashiv Shivam More & Ors.

..Respondents.

Mr.Milind M.Sathaye for the petitioners.

Mr.Sachin Gite for respondent No.1.

CORAM : M.S.SONAK, J.

DATE : APRIL 22, 2019

ORAL JUDGMENT

Heard Mr.Sathaye, learned counsel for the petitioners and Mr.Gite, learned counsel for respondent No.1.

2. Rule. Rule made returnable forthwith with the consent and at the request of the parties.

3. Challenge in this petition is to the order dated February 9, 2016 by which learned trial Judge allowed respondent-plaintiff to amend the plaint after the commencement of trial.

4. The record indicates that the petitioners had on earlier occasion raised the issue of non-joinder of necessary parties. Thereafter, this objection was pressed in the cross-examination of the plaintiff. Despite all this, the plaintiff did not seek leave to amend the plaint.

Ultimately, leave to amend the plaint was applied for at a belated stage and the same has been granted by the impugned order subject to payment of costs of Rs.800/-.

5. According to me, since this suit is for partition, there is no necessity to interfere with the impugned order which grants leave to amend the plaint. However, in such situation, the cost should have been atleast Rs.10,000/- and not merely Rs.800/-. Interest of justice, therefore, requires enhancement of amount of costs as it is obvious that the plaintiff on account of lack of diligence has delayed the proceedings in the suit.

6. Accordingly, the impugned order is modified and the amount of costs is increased from Rs.800/- to Rs.10,000/-. There is no reason as to why the costs or any part thereof be credited to the Government. The entire costs to be paid to the petitioners herein who have filed their say opposing the application seeking leave to amend the plaint.

7. The impugned order is modified in the aforesaid terms. The enhanced costs to be deposited before the trial Court within a period of four weeks from today from where the petitioners herein can withdraw the same unconditionally.

8. Rule is made absolute in the aforesaid terms.

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

(M.S.SONAK, J.)