

DDR

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 9902 OF 2015

Shivaji Balu Mali & ors.	..Petitioners
vs.	
Raosaheb Dattatraya Mali & ors.	..Respondents
....	
Shri P.P. Kulkarni for petitioners.	
None for respondents.	

....
CORAM : M.S.KARNIK, J.

DATE : 19th SEPTEMBER, 2019

P.C. :

Heard learned counsel for the petitioners.

2. The petitioners are the original plaintiffs. The plaintiffs had filed the suit for partition and separate possession. The parties led their evidence. Before the trial Court the matter was posted for final arguments. Even the arguments were advanced. At the stage of passing of the judgment an application is made below Exhibit 67 by defendant Nos.1A to 1D under Order 6 Rule 17 of the Code of Civil Procedure for amending the

written statement. It is the contention of learned counsel for the petitioners that by the said amendment in the written statement effect of the admission that the property is an ancestral property is sought to be taken away. The trial Court observed that though there is a delay in filing the application and it is filed at the stage when the judgment is to be pronounced, on the ground that there are no guidelines for not entertaining a belated application for amending the written statement, allowed the application in the interest of justice.

3. No one has appeared on behalf of the respondents – original defendant Nos. 1A to 1D though they are duly served.

4. I have gone through the order passed by the trial Court. The record reveals that after the arguments are advanced, virtually at the stage of pronouncement of the judgment an application is made for amending the written statement. No doubt, a liberal approach has to be adopted in allowing the application for amending the written statement. However,

considering that there is no explanation whatsoever about due diligence and also that there are no reasons for filing the application so belatedly and further as is the contention of learned counsel for the petitioners that allowing the application amending the written statement will have the effect of taking away admission made in favour of the plaintiffs, in the absence of any opposition to this petition, I am inclined to allow this Petition.

5. The impugned order is set aside. The trial Court to proceed with the matter.

6. The application below Exhibit 67 stands rejected.

7. The Petition is allowed with no order as to costs.

(M.S.KARNIK, J.)

Diksha
Rane

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signed by
Diksha Rane
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