

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

WRIT PETITION NO.6542 OF 2017

Khimji M. Bhadra & Anr.

...Petitioners

Vs.

**Bholanath Matabadal
Alias Nanhaku Sharma & Ors**

...Respondents

**Mr. Ashutosh Gole, for the Petitioners
Mr. Shailesh Kumar Rai, for the respondent No.1
Mr. Girish Paryani I/b A & G Legal Associates LLP,
for respondent Nos.2 to 6.**

CORAM : M. S. SONAK, J.

DATE : APRIL 18, 2019

ORAL JUDGMENT :

1. Heard Mr. Gole for the petitioners, Mr. Shailesh Rai for the respondent No.1 / plaintiff and Mr. Girish Paryani for respondent Nos.2 to 6.
2. Rule. Rule is made returnable forthwith, with the consent of and at the request of Ld. Counsel for the parties.
3. Challenge in this petition is to the order dated 26/7/2016 by which Ld. Trial Judge has rejected the petitioners' (original defendants

4 and 5) application at Exh.66 seeking leave to amend the written statement.

4. Admittedly, application at Exh.66 was filed before the commencement of the trial in the suit. The Ld. Trial Judge has noted that earlier the petitioners had sought to adopt the written statement filed by the defendant Nos.7 and 8 and now the petitioners seek leave to amend their written statement. The Ld. Trial Judge noted that this goes to show casual and relaxed approach of the petitioners. According to me, this is not a casual and relaxed approach. In any case, since leave to amend was applied for even before the commencement of trial of the suit, such leave could not have been declined on the ground that alleged casual and relaxed approach on the part of the petitioners.

5. Ld. Counsel for respondent No.1 (original plaintiff) further submits that the petitioners are subsequent purchasers who have themselves created further right during the pendency of the suit. He therefore submits that to such transaction doctrine of *lis pendens* will apply. He submits that the Trial Judge upon taking cognizance of this aspect has correctly declined the petitioners leave to amend the written statement.

6. According to me, the issue as to whether doctrine of *lis*

pendens will apply or not is a issue which required to be decided on merits after the conclusion of the trial. For this reason, leave to amend the pleadings could not have been declined. At the highest, it would have been clarified that all the objections on the part of the respondent no.1 are kept specifically open.

6. Accordingly, the impugned order is set aside. The petitioners' application for leave to amend the written statement at Exh.66 is hereby allowed. The amendment to be carried out within four weeks from today.

7. It is further clarified that all objections of respondent No.1 on merits are specifically kept open. Therefore, merely because leave to amend is granted, it should not be construed that the veracity of the pleadings is accepted or that any objection which respondent No.1 may be entitled to raise have been curtailed.

8. Rule is made absolute in the aforesaid terms.

9. Considering the facts of the present case, the petitioners will have to pay costs of Rs.5,000/- in favour of the respondent No.1 / plaintiff. Such costs should be paid within four weeks from today before the amendment is actually carried out to the written statement. If there is any difficulty in the payment of costs, the same shall be

deposited within four weeks in the Trial Court and respondent No.1 is at liberty to withdraw the same unconditionally.

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

(M. S. SONAK, J.)