

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

WRIT PETITION NO. 4925 OF 2005

Vithal s/o Jagannath Chaudhari,
Age : 75 years, Occu. Agriculture,
R/o Chanda, Tal. Newasa,
Dist. Ahmednagar.
Through his Legal Representatives
as per order Dt. 29-4-2011 in CA No.244/2010 :

- 1-A) Aasrabai Vithal Chaudhari
Age : 65 years, Occu. Household,
R/o Chanda, Tal- Newasa,
Dist. Ahmednagar.
- 1-B) Vachala Suresh Navshar,
Age : 45 years, Occu. Household,
R/o at post Pimpri Shahali,
Tal- Newasa, Dist. Ahmednagar.
- 1-C) Balasaheb Vithal Chaudhari,
Age : 40 years, Occu. Agri.
R/o. Chanda, Tal- Newasa,
Dist. Ahmednagar.
- 1-D) Saraswati Dashrath Barde,
Age – 32 years, Occu. Household
R/o : At post Kuktapur,
Tal- Newasa, Dist. Ahmednagar.
- 1-E) Lata Bandupant Gund,
Age – 25 years, Occu. Household
R/o. At post Gundwadi,
Tal- Newasa, Dist. Ahmednagar. ... **Petitioners.**

Versus

1. Gram Panchayat,
Village Chanda,
Tal. Newasa, Dist. Ahmednagar,

2. The Sarpanch,
Village Chanda,
Tal. Newasa, Dist. Ahmednagar,
3. The Village Development Officer,
Village Chanda,
Tal. Newasa, Dist. Ahmednagar. ... **Respondents.**

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Advocate for Petitioners : Mr. Mukul Kulkarni
Advocate for Respondent No.3 : Mr. S. T. Shelke
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CORAM : V. K. JADHAV, J.
DATE : 24.01.2020

ORAL JUDGMENT :-

1. Heard both the sides.
2. The petitioner is the original plaintiff instituted the Regular Civil Suit No.192 of 2000 for decree of perpetual injunction. The petitioner / plaintiff has filed an application Exhibit 53 under Order 6 Rule 17 of the Civil Procedure Code for seeking amendment in the plaint. The respondents / defendants have strongly resisted the said application by filing the say Exhibit 56. After hearing both the parties, the learned Joint Civil Judge Junior Division, Newasa by order dated 13.09.2004 below Exhibit 53 in Regular Civil Suit No.192 of 2000 rejected the application. Hence, this Writ Petition.

3. The learned counsel for the petitioner / plaintiff submits that during pendency of the suit and after rejection of the application filed by the petitioner / plaintiff for issuance of the temporary injunction and when it was confirmed by the Appellate Court, the respondents / original defendants demolished the construction over the suit plot with the help of JCB machine. The petitioner / plaintiff has therefore filed an application to bring to the notice of the Trial Court the subsequent events and further sought the insertion of a new prayer for declaration to the effect that the action taken by the defendant / respondent Gram Panchayat is improper, incorrect and illegal. The learned counsel submits that when the application Exhibit 53 under Order 6 Rule 17 of the Civil Procedure Code came to be filed, the issues were also not framed. The learned counsel submits that the proposed amendment would not change the nature of the suit nor cause any prejudice to the defence of the respondents / defendants. The Trial Court ought to have allowed the application Exhibit 53.

4. The learned counsel for the respondents / defendants submits that the petitioner / plaintiff has filed the application seeking amendment in the plaint at belated stage. The learned counsel submits that no subsequent event has taken place as stated in the application Exhibit 53. The learned counsel submits that the contents of the application Exhibit 53 are vague. The learned counsel submits that the Trial Court has rightly rejected the application Exhibit 53. No interference is required. The Writ Petition is liable to be dismissed. The learned counsel submits that the proposed amendment would change the nature of the suit and so also by insertion of a new prayer for the same cause of action is also not permissible. The learned counsel submits that the Trial Court has thus rightly rejected the application.

5. On careful perusal of the contents of the application Exhibit 53, it appears that the petitioner / plaintiff has brought to the notice of the Trial Court, the subsequent events. It has been specifically stated in the application that on 11.03.2001, the respondents / defendants with the help of JCB Machine demolished the construction over the suit property. The petitioner / plaintiff has, therefore, constrained to file an

application for insertion of the prayer about the declaration of the said action by the respondents / defendants as illegal. The said application Exhibit 53 came to be filed at the initial stage. It also appears that after rejection of the application of the petitioner / plaintiff seeking order of temporary injunction and when the said order came to be confirmed, the said subsequent event had taken place. I do not find that the proposed amendment would change the nature of the suit. On the other hand, it is in consonance with the first prayer for decree of perpetual injunction. The respondents / defendants are at liberty to file additional written statement, if so required. The impugned order thus deserves to be quashed and set aside, however, the suit of the year 2000 and therefore the directions are required to be given to the Trial Court to dispose of the suit, as expeditiously as possible, in a time bound manner. Hence, I pass the following order :

ORDER

1. The Writ Petition is hereby allowed.
2. The impugned order passed below Exhibit 53, dated 13.09.2004 in Regular Civil Suit No.192 of 2000 by

Joint Civil Judge Junior Division, Newasa is hereby quashed and set aside.

3. Application Exhibit 53 in Regular Civil Suit No.192 of 2000 is allowed in terms of its prayer clause in its entirety.
4. Needless to say that the respondents / defendants are at liberty to file the additional written statement. The Trial Court is hereby directed to dispose off the suit, as expeditiously as possible, preferably within a period of one (01) year from the date of this order.
5. Writ Petition is accordingly disposed off.
6. Rule is made absolute in above terms.

(V. K. JADHAV, J.)

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vmk/-