

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

15. WRIT PETITION No. 333 /2020

1. Sonibai W/o Hunya Padvi
age 68 years occupation agriculture
2. Mohan S/o Hunya Padvi,
age 44 years occupation agriculture

Both R/o Mojra Taluka Akrani Dist. Nandurbar. ...Petitioners
VERSUS

Madhukar S/o Parshi Valvi,
age 45 years occupation agriculture
R/o Khuntamodi Tal. Akrani Dist. Nandurbar ...Respondent

Mr. Prasanna N. Kutti, Advocate for petitioners
Mrs. Sushama Savale, Advocate for respondent.

CORAM : ROHIT B. DEO, J.

DATE : 15th January, 2020

PER COURT :

1. Rule. Rule is made returnable forthwith. Heard finally by consent.
2. The petitioners have preferred this petition questioning the legality of the order impugned, whereby the plaintiff/respondent is permitted to amend the plaint.
3. In view of the order, which I propose to pass, I do not intend to make any definite observation on the merits of the contentions raised by the learned Counsel for the petitioners-defendants and the learned Counsel for the respondent-plaintiff.

4. The learned Trial Court has given sound reasons to hold that the basic structure of the suit is not changed by the amendment, which seeks to incorporate additional relief. However, the proviso to Order VI Rule 17 of C.P.C and the implication thereof is not considered.

5. I note from the application that there is no attempt made to demonstrate that even with due diligence, the matter could not have been brought before the Court prior to commencement of the trial. In this view of the matter, while I would set aside order impugned, the respondent-plaintiff is given liberty to file afresh application in compliance with the proviso to Order VI Rule 17 of C.P.C. and if such an application is preferred, the same shall be decided as expeditiously as possible and in any event within two weeks of filing of the application, on its own merits and in accordance with law, without being influenced by any observation in this order.

6. The impugned order is set aside with liberty, as stated supra.

7. Rule is made absolute in afore-stated terms.

(ROHIT B. DEO)
JUDGE