

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

WRIT PETITION NO.12926 OF 2019

Chirayu Jamnadas Bhatia & Ors. Petitioners

Vs.

Shri. Labhshankar s/o late Respondent
Narbheram Pranshankar (deceased)
thru' Narendra Labhshankar Japi & Ors.

Mr. C.J. Bhatia, Petitioner No.1 in-person.

Coram : NITIN W. SAMBRE, J.

Date : 3rd January, 2020

P.C.:

1. The order impugned dated 22nd November, 2019 is passed below Exhibit 209, an application moved by the Petitioner-Plaintiff no.3 for issuance of summons on an application for amendment. So as to assail the above order, my attention is invited to the provisions of Order VI, Rule 17 of the Code of Civil Procedure as was amended on 5th September, 1983.

2. The submissions of party-in-person are, the parties are litigating for almost 18 years. The defendants are in habit of raising

technical objections including that of service of suit summons and in view of above, the petitioner- plaintiffs needs to be diligent enough to serve the copy of the proposed amendment on the defendant before the Court decides the amendment application Exhibit 207 as contemplated in the above Amendment.

3. A perusal of the amended provisions as are relied on empowers the Court even to grant an amendment application in absence of service of notice on the defendant, even if he remains absent in the suit, provided that it shall be open for the Court to order the service of the amended plaint on the defendants, in case if the Court permits or grants the amendment.

4. In view of above express provisions keeping the right of the petitioner intact to move the Court below for issuance of a fresh suit summons on the amended plaint in case the amendment is allowed. The present petition stands dismissed.

(NITIN W. SAMBRE, J.)