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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.2455 OF 2020

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|----|--|-------------|
| 1. | Sarthak s/o Pandurang Wanve
Age – 6 years, Occ – Nil
R/o Under Guardianship of his mother
Radhabai w/o Pandurang Wanve
Age – 24 years, Occ – Household
R/o C/o Savlaram Nathoba Tandale
Devlali (Panachi) Taluka – Ashti,
District – Beed | PETITIONERS |
| 2. | Radhabai w/o Pandurang Wanve
Age – 24 years, Occ – Household
R/o C/o Savlaram Nathoba Tandale
Devlali (Panachi) Taluka – Ashti,
District – Beed | |

VERSUS

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|----|--|-------------|
| 1. | Pandurang s/o Mahadev Wanve
Age – 33 years, Occ – Agriculturist
R/o Vetawadi, Taluka – Ashti,
District – Beed | RESPONDENTS |
| 2. | Mahadev s/o Bhonjiba Wanve
Age – 68 years, Occ – Agriculturist
R/o Vetawadi, Taluka – Ashti
District – Beed | |
| 3. | Nagnath s/o Mahadev Wanve
Age – 38 years, Occ – Agriculturist
R/o Vetawadi, Taluka – Ashti
District – Beed | |
| 4. | State of Maharashtra
Through Collector, Beed
Taluka and District – Beed | |
| 5. | The Competent Authority /
Sub Divisional Officer (Land Acquisition)
(Patoda) Taluka – Patoda, District - Beed | |

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Mr. Hrishikesh V. Tungar, Advocate for the petitioners

Mr. P. G. Borade, AGP for respondent - State

Mr. A.S.Kakade, Advocate for respondents No.1 to 3

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[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 23rd NOVEMBER, 2021

JUDGMENT :

1. Rule. Rule made returnable forthwith. Heard finally with the consent of learned advocates for the parties.

2. This petition challenges order dated 9th January, 2020 passed by learned Civil Judge, Senior Division, Beed below Exhibit-25 in Regular Civil Suit No. 243 of 2017.

3. The petitioners – original plaintiffs have filed Regular Civil Suit No. 243 of 2017 against the respondents seeking partition and separate possession as well as compensation of the suit property.

4. Father's name of defendant No. 3 is in fact "Mahadev", however, in the plaint, it was inadvertently mentioned as "Bhonjiba" and hence, application Exhibit-24 was filed by the petitioners under Order VI, Rule 17 read with section 151 of the Code of Civil Procedure, seeking correction in the name of

defendant No. 3. Said application was allowed by the trial court, vide order dated 4th June, 2019 and the plaintiffs were directed to carry out necessary amendment in the plaint on or before the next date. The plaintiffs failed to carry out the amendment on or before the next date in the suit. Therefore, by application Exhibit-25, the plaintiffs sought permission to carry out amendment in terms of the order dated 4th June, 2019 passed by the trial court below Exhibit-24. Said application Exhibit-25 is rejected by the trial court by the impugned order. Hence, the present writ petition.

5. Heard learned advocate for the petitioners, learned AGP and learned advocate representing respondents No. 1 to 3. Learned advocate for respondents No.1 to 3 fairly conceded that the amendment in the plaint needs to be carried out.

6. It is not in dispute that the amendment was directed to be carried out on or before the next date in the suit, however, the plaintiffs failed to carry out the amendment within the stipulated time, therefore, application Exhibit-25 was filed seeking permission to carry out the amendment.

7. The trial court has observed in the impugned order that none appeared on behalf of the plaintiffs, though called out

repeatedly and the plaintiffs have not explained the reasons for inordinate delay in carrying out the amendment and the plaintiffs have failed to appear before the court. Hence, the application Exhibit-25 came to be dismissed.

8. The plaintiffs have given reason of inadvertence for the delay in carrying out the amendments, but that cannot be a ground to dismiss the application of the plaintiff. The trial court ought to have allowed the application by imposing costs on the plaintiffs / petitioners.

9. Taking into consideration peculiar facts of the case, it is necessary in the interest of justice to permit the petitioners to carry out the amendment. No prejudice is likely to be caused to the defendants if the amendment is permitted to be carried out. In the circumstances, the writ petition deserves to be allowed. Hence the following order.

ORDER

I. The writ petition is allowed.

II. The impugned order dated 9th January, 2020 passed by the learned Civil Judge, Senior Division, Beed below Exhibit-25 in Regular Civil Suit No. 243 of 2017 is hereby quashed and set aside.

III. Application Exhibit-25 is allowed, subject to the petitioners paying costs of Rs.2000/- (Rupees two thousand only) to be deposited with Legal Aid Services Authority, District Court, Beed, within a period of four weeks from today.

IV. Rule is made absolute in aforesaid terms.

[NITIN B. SURYAWANSHI]
JUDGE

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