

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

**WRIT PETITION NO.490 OF 2019**

**GIRISH LAXMAN UBALE  
VERSUS  
CHAINMAL PANNALAL KOTHARI (DIED) THROUGH LRS RUPESH  
CHAINMAL KOTHARI AND ANOTHER**

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Advocate for Petitioner : Mr. Punit S. Mehta  
Advocate for Respondent Nos. 1A & 1B : Mr. L. D. Vakil

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**CORAM : NITIN B. SURYAWANSHI, J.**

**DATE : 25<sup>th</sup> AUGUST, 2022**

**PER COURT :**

1. By this petition, filed under Article 227 of the Constitution of India, petitioner challenges the order dated 30/11/2018, passed by learned 7<sup>th</sup> Joint Civil Judge, Senior Division, Aurangabad, below Exhibit-213 in Rent Suit No.02/2007, thereby rejecting application filed by the petitioner under Order 6 Rule 17 of the Code of Civil Procedure, seeking amendment in the written statement.

2. Respondent No.1 filed Rent Suit No.02/2007 against the petitioner and respondent No.2 for eviction on the ground of personal bonafide requirement. The suit is on the verge of conclusion. At the time of final hearing, present application Exhibit-213 is filed by the petitioner seeking leave to amend written statement, by proposing amendment that legal heirs i.e. sons of

respondent plaintiff have started a shop in the name 'Kothari Sarees' by converting two adjacent shops of defendant into one big shop and at present, business of the said shop is going on in full swing. In that view of the matter, petitioner wanted to contend that there is no bonafide personal requirement of plaintiff, in the suit shop. The said application is resisted by respondent plaintiff. The trial Court held that, no details of the said shop namely 'Kothari Sarees' are given by the petitioner, so also, it is not mentioned as to when the legal heirs of respondent plaintiff have started the shop. No *prima facie* material is placed on record in respect of the said shop. The suit is on the verge of conclusion and the proposed amendment is not necessary for deciding real controversy/dispute between the parties. The petitioner is trying to protract the suit by moving one or other application. The trial Court, therefore, rejected the application. Petitioner is aggrieved by the said order.

3. Having heard the learned advocate for petitioner and learned advocate for respondent Nos. 1A and 1B, and after going through the documents placed on record, this Court is of the view that in the facts of the present case the trial Court is justified in passing the impugned order. Since the petitioner has failed to bring on record any material to show that the shop namely 'Kothari Sarees' is started by legal heirs of respondent plaintiff and as to

when it is started, so also, the said application is filed at the fag end of the trial when the matter is on the verge of conclusion, the said amendment is not necessary for deciding the suit. It appears that the application is filed only to prolong the suit. The trial Court, therefore, has rightly rejected the application filed by petitioner, by giving cogent reasons.

4. No merit is found in the challenge raised by the petitioner in the present petition. Writ petition is, therefore, dismissed. No costs.

**(NITIN B. SURYAWANSHI, J.)**

SVH