

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

WRIT PETITION NO.7374 OF 2019

**SANTOSH SAHEBRAO GARAD AND ANOTHER
VERSUS
MADHUKAR SITARAM GARAD**

...
Advocate for Petitioners : Mr. Hanumant P. Jadhav
Advocate for Respondent : Mr. V. C. Patil Ashtekar
...

CORAM : NITIN B. SURYAWANSHI, J.

DATE : 17th AUGUST, 2022

PER COURT :

1. Petitioners are aggrieved by the order dated 26/03/2019, passed by learned Joint Civil Judge, Junior Division, Renapur, below Exhibit-61 in Regular Civil Suit No.96/2015, thereby allowing application filed by the respondent under Order 6 Rule 17 of the Code of Civil Procedure.
2. Petitioners claims that the application filed under Order VI Rule 17 is not maintainable as the respondent did not verify the said application. Second ground of challenge of the petitioners is that the said application ought not to have been allowed by the trial Court as the earlier application Exhibit-22, filed by respondent, was rejected by the trial Court.
3. Heard the rival submissions of learned advocate for petitioners and learned advocate for respondent. Perused the

documents placed on record.

4. There is no substance in the first ground of challenge raised by the petitioners that without verification the application Exhibit-61 is filed. Respondent has placed on record affidavit filed in respect of application Exhibit-61, at Exhibit-R-8 alongwith the affidavit-in-reply.

5. The trial Court has allowed the application filed by respondent/defendant on the ground that amendment sought by the defendant in his counter claim/written statement relates to the suit. If the amendment is allowed, nature of the suit is not likely to change and if the defendant is not permitted to file counter claim, it will lead to multiplicity of suits. For deciding real controversy between the parties, amendment is necessary. While allowing amendment application, for lack of due diligence, cost of Rs.300/- is imposed on the defendant/respondent, by the trial Court.

6. Trial Court is justified in coming to conclusion that amendment sought by the defendant is concerning to the suit and if amendment is rejected the same will lead to multiplicity of proceedings and amendment is required to be allowed to decide real controversy between the parties. In that view of the matter, trial Court is justified in exercising the discretion in favour of defendant/respondent.

7. Learned advocate for petitioners has placed reliance on the unreported judgment passed by this Court in *Writ Petition No.8001/2012 (Bhausahab Malhari Halnor Vs. Smt. Suman Rakhma Halnor and Another)*, in which amendment application was not signed by plaintiffs. In that view of the matter, this Court has set aside the order passed by trial Court allowing the amendment. Such are not the facts of the present case.

8. The second ground of challenge of the petitioners that, in view of rejection of application Exhibit-22, application Exhibit-61 ought to have been rejected, is also unacceptable. Application Exhibit-22 is filed under Order VII Rule 11 of the Code of Civil Procedure and application Exhibit-61 is filed under Order VI Rule 17. Rejection of application Exhibit-22 has no bearing on application Exhibit-61.

9. For the aforestated reasons, no merit is found in the challenge raised by the petitioners. Writ petition, being devoid of merit, is dismissed. No costs.

(NITIN B. SURYAWANSHI, J.)