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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.5271 OF 2014

Nagabai Datta Dake and Another

PETITIONERS

VERSUS

Narshing Malhari Sapure and Others

RESPONDENTS

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Mr. Vaibhav B. Dhage, Advocate for the petitioners

Mr. Prakashsing B. Patil, Advocate for respondents No. 1,3,4 & 5

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[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 16th MARCH, 2022

ORDER :

1. This petition challenges order passed by learned Extra Joint Civil Judge, Junior Division, Kandhar below Exhibit-26 in Regular Civil Suit No.85 of 2013.

2. The petitioners – original plaintiffs filed the suit for partition and separate possession of the suit property. The suit was resisted by the defendants – respondents, by filing written statement. In the written statement, the respondent – defendants in their additional averments, have stated that defendant No.4 had filed Regular Civil Suit No. 144 of 2012 against defendants No. 1, 3 and 5, wherein compromise was

arrived at and compromise decree was passed.

3. The petitioners – plaintiffs, therefore, filed application Exhibit-26, seeking amendment in prayer clause of RCS No. 85 of 2013 contending that the petitioners – plaintiffs have not claimed any relief in respect of the compromise decree passed in RCS No. 144 of 2012.

4. The application is rejected by the Trial Court holding that the written statement was filed by the defendants on 30th November, 2013, issues were framed on 15th January, 2014, thereafter the plaintiffs have filed affidavit in lieu of examination in chief on 20th February, 2014. Thus, the trial has commenced on 20th February, 2014. Cross-examination of the plaintiff was conducted on 3rd March, 2014 and the application seeking amendment is filed on 15th March, 2014. No reason is assigned for delay in filing the application and there is lack of due diligence on the part of the plaintiffs – petitioners. Therefore, the Trial Court rejected the application Exhibit-26.

5. Heard rival submissions of the learned advocate for the petitioners and learned advocate for the respondents.

6. It is a settled legal position that amendments are to be liberally allowed, so as to avoid multiplicity of proceedings. No

prejudice is likely to be caused to the respondents, if the amendment as sought by the petitioners – plaintiffs is allowed. The respondents can be adequately compensated for the delay caused on the part of the petitioners – plaintiffs in filing the amendment application.

7. In that view of the matter, I am inclined to allow the writ petition. Writ petition is allowed in terms of prayer clause “B”, subject to the petitioners – plaintiffs paying costs of Rs.5000/- to the defendants – respondents in the Trial Court.

8. The amendment shall be carried out within a period of two weeks from the date of receipt of writ of this order. The defendants – respondents are entitled to file additional written statement pursuant to the amendment. The suit, thereafter shall proceed in accordance with law.

[NITIN B. SURYAWANSHI]
JUDGE