

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

WRIT PETITION NO. 6569 OF 2014

Namdev Khandu Patil

.. Petitioner

Versus

Devkinandan Pitambar Zanwar
and another

.. Respondents

Shri S. D. Hiwrekar, Advocate for the Petitioner.
Shri Mahesh K. Bhosale, Advocate h/f Shri A. S. Sawant,
Advocate for the Respondent No. 1.

**CORAM : SANDEEP V. MARNE, J.
DATE : 30TH NOVEMBER, 2022.**

FINAL ORDER :

. By this petition, petitioner challenges order dated 24.06.2014 partly rejecting plaintiffs application for amendment of plaint. The amendment was sought in two parts. In the first part of the proposed amendment, the plaintiff sought to bring on record the factum of Tahsildar report shows plaintiff's possession over the property. This part of the amendment is allowed by the impugned order dated 24.06.2014.

2. By second part of amendment, plaintiff desires to bring on record a pleading to the effect that the defendant No. 2 had acknowledged in writing that the concern transaction is that of loan. This second part of amendment is rejected by the Trial Court holding that the same would cause prejudice to the

defendants.

3. I have perused the plaint and it is apparent that entire plaint proceeds on a premise that the transaction is that of loan. By proposed amendment the plaintiff wants to incorporate an averment to the effect that there is an acknowledgment of plaintiff's case by the defendant No. 2 to the effect that the transaction is indeed a loan transaction. Whether there is indeed any such admission/acknowledgment on the part of the defendant No. 2 or not is something which the plaintiff will have to prove by leading evidence. All that is sought to be done at this stage is mere incorporation of event that has taken place in the plaint. Perusal of the order passed by the Trial Court shows no finding is recorded by the Trial Court that the evidence in the suit has commenced. Learned counsel for the petitioner submits that the Trial has not commenced and only issues were framed and the application for amendment was moved.

4. Considering the proposed amendment in second part, I am of the view that incorporation of the same in the plaint would not change the nature of the suit. Consequently, the writ petition succeeds. The order dated 24.06.2014 passed by the Civil Judge Junior Division, Jamner on application at Exhibit 63 in R.C.S. No. 151 of 2012 is set aside and the application at Exhibit 63 for amendment is allowed in its entirety. The petitioner to pay cost of Rs. 10,000/- (Rs. Ten thousands only) to the respondents within a period of four (04) weeks from today.

5. With the above directions, the writ petition is allowed. The costs to be deposited in the Trial Court within the stipulated time with liberty to the respondents/defendants to withdraw the same. Needless to state, failure on the part of the petitioner to deposit the costs in the Trial Court within the stipulated time would result in dismissal of the present petition and revival of the order dated 24.06.2014. Since the suit is of the year 2012, the Trial Court is requested to expedite its hearing and to make an endeavour to decide the same as expeditiously as possible and preferably within a period of one (01) year from today.

[SANDEEP V. MARNE, J.]

bsb/Nov. 22