

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

WRIT PETITION NO.9785 OF 2019

Dnyandeo s/o. Gitaram Kokate
Deceased through his LRs

1-A) Chabubai w/o. Dnyandeo Kokate
Age : 75 years, Occu : Household,

1-B) Asha w/o. Vitthal Thombre
Age : 45 years, Occu : Household,

1-C) Santosh s/o. Dnyandeo Kokate
Age : 42 years, Occu : Service

1-D) Ambadas s/o. Dnyandeo Kokate
Age : 39 years, Occu : Agri,
All R/o. Chichondi Patil, Tq. Nagar,
Dist. Ahmednagar

.. Petitioners

Versus

Ananda Gitaram Kokate
Age : 68 years, Occu : Agri,
R/o. Chichondi Patil,
Tal. Nagar, Dist. Ahmednagar

.. Respondent

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Advocate for Petitioners : Mr. N.C. Garud
Advocate for Respondent : Mr. L.B . Palod

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CORAM : SANDEEP V. MARNE, J.

DATE : 19-10-2022

ORAL JUDGMENT :

. Heard. Rule. It is made returnable forthwith.
Mr. L.B. Palod, learned advocate waives notice on behalf of the
respondent. At the joint request of the parties, the matter is heard

finally at the admission stage.

2. By the present petition, the petitioners have assailed the order dated 06.03.2019 passed by 14th Jt. Civil Judge, Senior Division, Ahmednagar on application below Exh.27 rejecting his application for amendment of the written-statement. The application is rejected on the ground that the trial had commenced and the petitioner did not show due diligence as required under the proviso to Order-6, Rule-17 of the Code of Civil Procedure.

3. After going through the proposed amendment, it is seen that the amendment is necessitated on account of an event taking place subsequent to the institution of the suit and filing of the written-statement. An order came to be passed by Tahsildar under the provisions of Section 5 of the Mamlatdars' Courts Act granting right of way in favour of the defendant – petitioner. That event was sought to be brought on record by way of amendment of the written-statement. The application for amendment was filed on 20.02.2019. Unfortunately for the defendant during the period from 24.12.2018 to 20.02.2019 the trial in the suit commenced with the plaintiff filing his affidavit of examination-in-chief on 02.02.2019. The defendant cross-examined the plaintiff on 12.02.2019 and the plaintiff closed his evidence on 16.02.2019. At this stage, the

application for amendment came to be filed on 20.02.2019.

4. True it is that the application for amendment was filed after the trial had commenced. However, in my opinion, the defendant – petitioner showed due diligence in filing the amendment application. The very event which necessitated the amendment occurred on 24.12.2018 and the defendant filed the amendment application in less than two months thereafter on 20.02.2019. In such circumstances, the trial Court ought to have allowed the amendment application.

5. The learned counsel appearing for the respondent relies upon the judgment of this Court in the **Liquidator, The Maratha Market People's Co-op. Bank Ltd Vs. M/s. Jeejaee Estate & Ors**, 2019 (1) ALL MR 884. In that case the issue was whether the trial commences with the plaintiff filing affidavit of evidence. This Court has answered the question in affirmative. In this case, admittedly the trial had commenced as the evidence of plaintiff was already closed before the application for amendment was moved. The only distinguishing factor in the judgment of the **Liquidator** (*supra*) is that the plaintiff in that case was within the knowledge of the events which were sought to be brought on record by amendment prior to

institution of the suit. In this case, the event has taken place after filing of the written-statement and it cannot be said that the said event was within the knowledge of the defendant at the time of filing his written-statement. The facts in the case of the **Liquidator** (*supra*) are thus clearly distinguishable.

6. In the result, the petition succeeds. The order dated 06.03.2019 passed by 14th Jt. Civil Judge Senior Division, Ahmednagar is set aside and the application of the defendant - petitioner below Exh.27 stands allowed in terms of the prayers made therein. Writ Petition stands disposed of accordingly.

7. Rule is made absolute.

(SANDEEP V. MARNE, J.)

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GGP