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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.9487 OF 2018

Badesab Mubarak Shaikh and Others

PETITIONERS

VERSUS

Papasaheb Gaibeesaheb Shaikh

RESPONDENTS

.....

Mr. Vikram S. Undre, Advocate for the petitioners

Mr. S. N. Kendre, AGP for respondent - State

Mr. G. R. Syed, Advocate for the respondent

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[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 5th JANUARY, 2022

ORDER :

1. Challenge raised in this petition is to the order passed below Exhibit-25 in Miscellaneous Civil Application No.6 of 2015 by learned Civil Judge, Senior Division, Paranda, thereby rejecting the application seeking amendment.

2. The petitioners filed Miscellaneous Civil Application No. 6 of 22015 seeking heir-ship certificate on the death their father namely Mubarak Badruddin Shaikh under section 2 of the Bombay Regulation Act. Said application was resisted by the respondent.

3. During pendency of the Miscellaneous Civil Application, the

petitioners moved application Exhibit-25 seeking amendment in the Miscellaneous Civil Application and also sought amendment to the prayer clause.

4. The respondent opposed said prayer and the trial court rejected the application mainly on the ground of lack of due diligence on the part of the petitioners as the petitioners filed amendment application at the belated stage. The petitioners are aggrieved by this rejection order.

5. After hearing the rival submissions of the respective learned advocates and after going through the record, it is clear that the petitioners have filed the application seeking amendment after commencement of the trial. The petitioners have failed to show due diligence in moving the application seeking amendment.

6. In the Miscellaneous Civil Application, the petitioners have already laid foundation and the amendment proposed by the petitioners is necessary to decide real question in controversy between the parties. In that view of the matter, the petitioners are entitled for the relief.

6. Learned advocate for the respondent was right in

contending that the scope of inquiry in the Miscellaneous Civil Application filed under the provisions of the Bombay Regulation Act is limited. It is only to the extent of as to whether the petitioners are entitled to heir-ship certificate or not. Hence, the petitioners are not entitled to amend the prayer clause as is proposed by the petitioners in the amendment application.

7. This court finds force in the submission of learned advocate for the respondent that the prayer clause proposed to be amended by the petitioners cannot be allowed. However, pleadings can be amended by the petitioners, though it is a fact that there is lack of due diligence on the part of the petitioners in filing application seeking amendment, the respondent can be adequately compensated for the same. Hence, the following order-

ORDER

- A. Amendment application Exhibit-25 is partly allowed. The petitioners may amend their pleadings in the Miscellaneous Civil Application, however, prayer of the petitioners for amendment in the prayer clause is hereby rejected.
- B. After the amendment is carried out, the respondent shall be entitled to file additional say / written

statement.

- C. Petitioners to pay costs of Rs.10,000/- to the respondent before the trial court.
- D. Writ petition is disposed of with aforesaid observations.

[NITIN B. SURYAWANSHI]
JUDGE