

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

WRIT PETITION NO. 13963 OF 2021

Anand s/o Jugalkishor Jaiswal

...Petitioner

Versus

Jugalkishor s/o Mohanlal Jaiswal
Since Deceased, through Legal Heirs & Ors.

...Respondents

.....
Mr. Ranbir L. Chhabda, Advocate for the petitioner
.....

**CORAM : BHARATI H. DANGRE, J.
DATE : JANUARY 25TH, 2022**

PER COURT : -

1. Heard the learned Counsel for the petitioner and perused the impugned order dated 23.11.2021 passed by the 8th Jt. Civil Judge (Senior Division), Aurangabad, below Exh. 105 in Special Civil Suit No. 471/2011.

2. The sequence of events would reveal that the petitioner is the original plaintiff who has filed the Special Civil Suit No. 471/2011 seeking partition and separate possession and some other ancillary reliefs against the respondents in respect of the joint family properties. The issues came to be settled on 03.08.2012 and the respondents filed amended written statement pursuant to the

amendment to the plaint on 08.06.2015. The evidence affidavit was filed on 13.07.2018. The proceedings could not then move ahead and on 02.08.2021, an application was taken out by the defendant nos. 2 to 5 seeking amendment to the written statement. The amendment was sought on the ground that the suit being filed for partition and separate possession, all the joint family property should be included in the suit and the defendants had no knowledge regarding the PPF account of their mother and since this fact was not included in the plaint, even in the written statement on gaining knowledge about the PPF account, the amendment was sought to be inserted by insertion of para no. 1-A limited to that effect, coupled with an allegation is sought to be made in the written statement that the plaintiff has not added all the joint family properties in the hotchpotch and, therefore, the suit is liable to be dismissed.

. This is the only amendment which is sought for by the plaintiff which has been allowed subject to imposition of costs of Rs.5,000/-. True it is that Order 7 Rule 17 CPC, which is a provision for grant of amendment, by proviso would not permit an amendment, which is belated or if there is a failure to establish that despite due diligence, the said facts could not be brought before the Court within the prescribed time limit, however, the basic principle governing Order 6 Rule 17 CPC being to the effect that every amendment shall

be allowed at any stage if it is necessary for effective adjudication of the proceedings and if it avoids multiplicity of litigation. Since the suit is filed for partition and separate possession and the PPF account of the mother was not included in the properties set out for partition, the amendment is sought to be introduced by way of the written statement. The learned Judge has rightly construed the necessity of bringing the said amendment and by recording that the real controversy between the parties would be determined only at the end of the trial, since the amendment do not change the nature of proceedings or the relief sought in the plaint, the same has been granted. The impugned order therefore cannot be said to be suffering from any legal infirmity and it deserves to be upheld. The writ petition is necessarily dismissed. It is made clear that since the special civil suit filed by the plaintiff is pending since the year 2011, the learned Judge is requested to terminate the proceedings in the said suit within six months from today.

3. On the amendment being permitted to be carried out, the plaintiff is at liberty to take appropriate steps as are necessary.

[BHARATI H. DANGRE]
JUDGE