

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.1601 OF 2022

Shri. Mirza Mohammed Khalid Dawood and Ors. ..Petitioners

Versus

Bhiwandi Nizampura City Municipal
Corporation, Bhiwandi and Ors.

..Respondents

Mr. Sandesh D. Patil i/by Divya A. Patil-Pawar, for the Petitioners.

Ms. Sucheta D. Ghaisas, for the Respondent No.1.

Mr. Raju D. Suryawanshi, for Respondent No.2.

CORAM : NITIN W. SAMBRE, J.

DATE : 11th MARCH, 2022

PC.

1. On or about November, 2016, a suit for permanent injunction is initiated by the petitioners against the respondent/Corporation directing it not to demolish suit structure and disturb possession of the petitioners/plaintiffs. Immediately to the said suit, a written statement was tendered by the respondent/Corporation on or about September, 2016 pointing out that a notice was already served on petitioners on 20th May, 2016 i.e. before filing of the suit.

2. On this basis, petitioners took out application Exh.131 seeking amendment to the plaint which is rejected vide impugned order dated 10th January, 2022. The submission of Mr. Sandesh Patil

is, the amendment sought ought to have been granted by the Court below as the same is necessary for adjudication of the issue in the suit. According to him, at this stage, Trial Court cannot go into the issue of maintainability of suit claim and limitation. He draws support from the judgment of Hon'ble Apex Court in the matter of ***Andhra Bank Vs. ABN Amro Bank N. V. and Ors*** reported in (2007) 6 SCC 167.

3. Counsel for the respondents would oppose the prayer as according to her, suit itself is not maintainable.

4. I have appreciated the submissions.

5. The suit is for simplicitor injunction, in which the petitioners intend to incorporate pleading in the plaint so as to challenge the notice issued by the respondent/Corporation. From the perusal of rival pleadings, it can be inferred that the said notice was served on the petitioners/plaintiffs. There is enough material on record in the form of pleadings that such notice was affixed on the premises occupied by the petitioners. This fact was brought on record by way of written statement way back in 2016 and thereafter till 2021 no steps are taken by the petitioners. Petitioners by way of afterthought in 2021 have sought amendment to the plaint claiming that such notice of demolition be declared as illegal and not binding.

6. Limitation for seeking relief of declaration is three years. Petitioners could have sought relief for declaration at the most by the end of 2019. However, in 2021, petitioners have sought to incorporate time barred claim of declaration by way of amendment. As such, in this background, issue of limitation in this case can't be termed as mix question of fact and law.

7. The judgment relied by the counsel for the petitioners in the matter of *Andhra Bank (cited supra)* will be of hardly any assistance, as this Court is sensitive to the fact that amendment even at the stage of pre-trial stage can be granted. However, this Court must be sensitive to the fact that such claims which are sought to be incorporated by way of amendment should not be time barred. The Court has every power to look into the issue of limitation at this stage based on the admitted/undisputed set of facts. That being so, the Court below was justified in rejecting prayer for amendment.

8. Apart from above, maintainability of the suit for simplicitor injunction is also an issue which goes against the interest of the petitioners. That being so, no case for interference in the extraordinary jurisdiction of this Court is made out.

9. The petition as such stands dismissed.

[NITIN W. SAMBRE, J.]