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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 103 OF 2021**

M/S. NANABHOY JEEJEEBHOY PVT. LTD.
AND ANR.Petitioners.

Vs
SHANKAR FAKIRAPPA YELIGAR Respondent

**WITH
WRIT PETITION NO. 1672 OF 2021**

M/S. NANABHOY JEEJEEBHOY PVT. LTD.
AND ANR.Petitioners.

V/s
GURMIT SINGH DONGRA Respondent.

**WITH
WRIT PETITION NO.1671 OF 2021**

M/S. NANABHOY JEEJEEBHOY PVT. LTD.
AND ANR.Petitioners.

V/s
AJAB SINGH Respondent.

**WITH
WRIT PETITION NO. 3666 OF 2021**

M/S. NANABHOY JEEJEEBHOY PVT. LTD.
AND ANR.Petitioners.

V/s
MRS. JASPAL BALHAR BASRA & ORS Respondents.

Mr. Vishal Kanade a/w Mr. Monil Punjab a/w Mr. Mohan G. Salián i/b MGS Legal for the Petitioners.

Mr. Rushil Mehta a/w Mr. Raj Adhia a/w Ms. Nidhi Boriya for the Respondent in Writ Petition No. 3666 of 2021 and in Writ Petition No.1671 of 2021.

Mr. Girish B. Kedia a/w Mr. Kusharg Kedia for the Respondent in Writ Petition No.1672 of 2021.

CORAM: NITIN W. SAMBRE, J.

DATE: FEBRUARY 21, 2022

PC.:-

1] For the convenience, all these four Petitions are tagged and heard finally by consent.

2] Impugned in the Petition is an order dated 28th November, 2019 passed against the Petitioners/Plaintiffs, rejecting prayer for amendment wherein correction in the description of the suit property is disallowed.

3] Relying on the law laid down by the Apex Court in the matter of *Gurubaksh Singh and Others vs. Buta Singh and Another* reported in (2018) 6 SCC 567, Mr. Vishal Kandaé, learned Counsel for the Petitioners submitted that since nature of the suit claim is not changed

by the amendment, Petitioners are entitled for amendment with imposition of reasonable conditions. He would claim that only correction in description of the suit property was sought for before the court below.

4] Prayer is strenuously opposed by the Counsel for the Respondents/Defendants as, according to him, suit has travelled at an advance stage, as the trial has already commenced. According to him, Petitioners must demonstrate co-relation between the property's description which is sought to be inserted by amendment and one which is already mentioned in the plaint. He would claim that, on earlier occasion, Petitioners' similar prayer was granted. However, in the case in hand, there is no due diligence on the part of the Petitioners/Plaintiffs.

5] Considered rival submissions.

6] The controversy in all these four Petitions can be narrowed down to the extent of whether Petitioners/Plaintiffs can be granted amendment to the extent of carrying out correction in the description

of the suit property. Admittedly, Petitioners are not seeking any other amendment or insertion of any additional claim in relation to the amended claim i.e. correction in the description of the suit property. What is sought to be inserted is only correct description of the suit property. If such a correction at present stage of the suit where plaintiffs' affidavit of evidence is placed on record alongwith documents is allowed, in my opinion, same will not cause any prejudice or hardship to the Respondents/Defendants.

7] The controversy referred above is squarely covered by the judgment of the Apex Court in the case of *Gurubaksh Singh* cited supra. Paras 5 and 6 of the said judgment are worth to be relied upon, which read thus:-

“5. In the present case the record of Civil Suit No.195 of 1968 in which ex parte decree was passed on 30.06.1969 is not traceable. In the circumstances, there could possibly be some inability in obtaining correct particulars well in time on part of the appellants. At the time when the application for amendment was preferred, only two official witnesses were examined. The nature of amendment as proposed neither changes the character and nature of the suit nor does it introduce any fresh ground. The High Court itself was conscious that the

amendment would not change the nature of the suit. In the given circumstances, in our view, the amendment ought to have been allowed. In any case it could not have caused any prejudice to the defendants.”

“6. While allowing amendment of plaint, after amendment of 2002, this Court in circumstances similar to the present case, in *Abdul Rehman vs. Mohd. Ruldu* [(2012) 11 SCC 341 : (2013) 1 SCC (Civ) 314], had observed: (SCC pp.344-45 para 11)

“11. The original provision was deleted by Amendment Act 46 of 1999, however, it has again been restored by Amendment Act 22 of 2002 but with an added proviso to prevent application for amendment being allowed after the trial has commenced, unless the court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial. The above proviso, to some extent, curtails absolute discretion to allow amendment at any stage. At present, if application is filed after commencement of trial, it has to be shown that in spite of due diligence, it could not have been sought earlier. The object of the rule is that courts should try the merits of the case that come before them and should, consequently, allow all amendments that may be necessary for determining the real question in controversy between the parties provided it does not cause injustice or prejudice to the other side. This Court,

in a series of decisions has held that the power to allow the amendment is wide and can be exercised at any stage of the proceeding in the interest of justice. The main purpose of allowing the amendment is to minimise the litigation and the plea that the relief sought by way of amendment was barred by time is to be considered in the light of the facts and circumstances of each case. The above principles have been reiterated by this Court in *J. Samuel v. Gattu Mahesh* [(2012) 2 SCC 300: (2012) 1 SCC (Civ) 801] and *Rameshkumar Agarwal v. Rajmala Exports (P) Ltd.* [(2012) 5 SCC 337 : (2012) 3 SCC (Civ) 92]. Keeping the above principles in mind, let us consider whether the appellants have made out a case for amendment.”

8] In the aforesaid backdrop the impugned order dated 28th November, 2019 passed in all these four Petitions are hereby quashed and set aside. Chamber Summons No.535 of 2018 in Suit No. 7580 of 2002 (High Court Suit No.1481 of 2002), Chamber Summons No.533 of 2018 in Suit No.7578 of 2002 (High Court Suit No.1479 of 2002), Chamber Summons No.532 of 2018 in Suit No.7577 of 2002 (High Court Suit No.1478 of 2002) and Chamber Summons No.531 of 2018 in Suit No.7576 of 2002 (High Court Suit No.1477 of 2002) are allowed, subject to the Petitioners depositing costs of Rs 1 lakh

(Rupees one lakh only) in each of the Petitions in suits pending before the court below within a period of six weeks, subject to which amendment be permitted by the Trial Court.

9] Costs of Rs 1 lakh (Rupees one lakh only), in my opinion, in each of these Petitions is justified having regard to the fact that suit is pending since 2002 and trial in the suit has already commenced. The amendment which is granted is based on facts which were in existence in 2013. Earlier, Chamber Summons to the extent of other amendment was already granted by the Court below at which point of time, Petitioners were negligent in seeking present relief of amendment.

10] In case if the costs is not deposited, Court shall proceed ahead with the suit as if order rejecting amendment is confirmed by this Court. In case if costs is deposited, needless to clarify that Respondents/Defendants shall be entitled to withdraw the same.

11] All these four Petitions are accordingly allowed in above terms.

(NITIN W. SAMBRE, J.)