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

**WRIT PETITION NO. 6264 OF 2022  
WITH  
INTERIM APPLICATION NO.3285 OF 2022  
IN  
WRIT PETITION NO. 6264 OF 2022**

Krishnadas Jagmihandas Shroff  
(deleted since deceased)  
1A. Mayur Krishnadas Shroff  
and Anr.

.... Petitioners.

V/s  
State Bank of Bikaner and Jaipur  
(Deleted)  
State Bank of India

.... Respondent.

Mr. Ankit Rajput i/b Rutvij Bhatt for the original Petitioners.  
Mr. Bharat H. Mehta a/w Mr. Toor a/w Mr. Devang Mehta for the  
Respondents.

**CORAM: NITIN W. SAMBRE, J.**

**DATE: JULY 19, 2022**

P.C.:-

1] Heard.

2] Challenge in the Petition is to the order dated 7<sup>th</sup> April, 2022  
passed below Exhibit-34 whereby Respondent's Application moved for

amendment of Memo of Appeal came to be allowed.

3] Counsel for the Petitioners would urge that amendment application has been moved at much belated stage i.e. after six years of lodging of the Appeal. According to him, in 2018, already amendment was carried out when the grounds which are now sought to be incorporated by way of amendment were available. As such, according to him, it is a case of acquiescence, as the Respondent knowing fully well of such grounds having not raised the same has been estopped from incorporating the said grounds at belated stage. Drawing support from the judgment of the Apex Court in the matter of *Ganga Bai vs. Vijay Kumar and Ors* in Civil Appeal No.582 of 1969 delivered on 09/04/1974 , he would urge that amendment cannot be permitted at belated stage, if such a prayer is not accompanied with application for condonation of delay.

4] The order impugned is supported by the Counsel for Respondents.

5] I have appreciated aforesaid submissions.

6] The judgment of the Apex Court in the matter of *Ganga Bai*, cited supra is in relation to challenge to decree for partition wherein preliminary decree was not questioned by the party and while questioning final decree, at belated stage in appeal amendment was sought. However, in the case in hand proceedings are for mesne profit. This Court is required to be sensitive to the provisions of Order 41 Rule 2 of the Civil Procedure Code which allows party to agitate additional grounds with permission of the Court. Such grounds, which are not supported by any pleadings or evidence, of-course, will be ignored by the Appellate Court at the time of final hearing. However, that by itself will not give leverage to the Petitioners to claim that Respondent is not entitled for amendment as prayed. The order impugned appears to be in tune with the law. No interference is called with the order impugned. Petition as such fails and same stands dismissed.

7] However, Respondent/Appellant is put to condition of depositing

of Rs 10,000/- towards costs in the above proceedings within a period of four weeks from today as condition precedent for arguing the additional grounds set-forth by way of amendment. Needless to clarify that Petitioners will be entitled to withdraw the said costs.

8] Since Petition itself is disposed of, nothing survives in pending Interim Application and same is also disposed of.

( NITIN W. SAMBRE, J. )