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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 9466 OF 2021**

Vatsalabai R. Patil
(since deceased)

Through LR

1.1 Suhasini G. Patil
(since deceased)

Through LR

1.1A Rajendra G. Patil and Ors.

....Petitioners.

V/s

Smt. Vimla Mehta

(since deceased through LR)

a. Jayantilal P. Mehta and Ors.

.... Respondents.

Ms. S.R. Patil, Constituted Attorney for the Petitioners.

CORAM: NITIN W. SAMBRE, J.

DATE: AUGUST 01, 2022

P.C.:-

1] This Petition is by the Petitioners who are Defendants to RAE Suit No.449/860 of 2006 which is for eviction on the ground of non-user. It is claimed that Respondents-Plaintiffs were permitted to amend the suit which they have failed to and as such Application-Exhibit-93 is taken out for dismissal of the suit. Such prayer is rejected vide impugned order dated 29th October, 2021.

2] Power of Attorney holder for the Petitioners/Defendants would

urge that if amendment as was permitted by the Trial Court in favour of the Respondents/Plaintiffs is not carried out then such contemptuous act should invite consequences of dismissal of the suit.

3] I am afraid, there is no such provision in the Civil Procedure Code or Small Causes Courts Act to invoke powers of dismissal of suit on the ground of non-carrying out of amendment. In my opinion, Court below was justified in rejecting the prayer made in Application-Exhibit-93 on the aforesaid count. At the most, failure of the Respondents/Plaintiffs in not carrying out amendment as was directed would entail consequences of ceasing of the right of the Respondents to carry out such amendment in future.

4] With the above observations, no case for interference is made out. Petition fails and same stands dismissed.

(NITIN W. SAMBRE, J.)