

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1533 of 2016

- 1.1. Yovraj Sinha, S/o Late Krishna Prasad Sinha, resident of Village-Manikpur, P.S.-Obra, Dist-Aurangabad.
- 1.2. Chitra Sinha, Wife of late Krishna Prasad Sinha, resident of Village-Manikpur, P.S.-Obra, Dist-Aurangabad.
2. Chitra Sinha wife of Late Vijay Kumar Sinha, Daughter-in-law of Late Dr. Hanuman Sahay
3. Janeshwar Singh son of Late Devnandan Singh
4. Awadh Bihari Singh @ Madan Singh son of Late Devnandan Singh
- 5.1. Mithlesh Kumar, Husband of Late Anita Devi,
- 5.2. Aditya Kumar, son of Mithlesh Kumar,
- 5.3. Anand Kumar, son of Mithlesh Kumar, resident of Village-Manikpur, P.S.-Obra, Dist-Aurangabad.
6. Sushila Devi wife of Krishna Kumar
All residents of Village- Manikpur, Police Station- Obra, District-Aurangabad.

... .. Petitioner/s

Versus

1. Ram Lakhan Yadav
2. Ram Naresh Yadav
Both are sons of Late Ram Charitra Yadav
3. Shanti Kuer wife of Late Ram Suresh Yadav
4. Mukesh Kumar
5. Gautam Kumar Both 4 and 5 are sons of Late Suresh Yadav
6. Guddi Kumari Daughter of Late Suresh Yadav
7. Betan Kumari Daughter of Late Suresh Yadav
8. Jitan Kumari Daughter of Late Suresh Yadav
All 1 to 8 are residents of Village- Manikpur, Police Station- Obra, District-Aurangabad.
9. Sumatia Devi wife of Sri Anant Yadav, resident of Village- Hansedih, P.S.-Kaler, District- Arwal.
10. Dhaneshwari Devi wife of Sri Kapil Yadav, resident of Village- Sirigorya, P.S.- Obra, District- Aurangabad.
11. Rajeshwari Devi wife of Sheo Narayan Singh, resident of Village- Sansa, Police Station- Daudnagar, District- Aurangabad.
12. Ram Nandan Yadav son of Late Khublal Yadav
13. Shatrudhan Yadav son of Ram Nandan Yadav
14. Bharat Yadav son of Ram Nandan Yadav All 12 to 14 are residents of



Village- Marvatpur, P.S.- Khudwan, District- Aurangabad.

15. Shakuntala Devi wife of Ram Sewak Singh, resident of Village- Kothian, Police Station- Obra, District- Aurangabad.
16. Manju Devi wife of Radhe Shyam Singh, resident of Village- Dariyapur, Police Station- Muffasil Aurangabad, District- Aurangabad.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mrs.Prakritita Sharma, Advocate
For the Respondent/s	:	Mr. Purushottam Sharma, Advocate

CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA

CAV JUDGMENT

Date : 22-12-2023

The petitioners have preferred the instant petition against the order dated 09.09.2016 passed by the learned Munsif, Daudnagar, Aurangabad in Title Suit No. 115 of 1987 whereby the learned Munsif allowed the amendment petition dated 12.08.2016 filed by the plaintiffs/respondents for adding the relief of declaration of title and confirmation of possession in relief portion of the plaint.

2. From the records, it appears that Case No. 1741 of 1981 corresponding to Trial No. 99/1994 for a proceeding under Section 145 Cr.P.C. was initiated in respect of certain lands before the Executive Magistrate, Aurangabad who passed an order on 19.04.1984 declaring the possession of the defendants/petitioners and restraining the plaintiffs/respondents from interfering with the peaceful possession of



defendants/petitioners till decision otherwise by a competent court. Against the order dated 19.04.1984, the plaintiffs/respondents preferred Criminal Revision No.41 of 1984/15 of 1986 which was rejected by order dated 23.05.1987 by learned Additional Sessions Judge-IV, Aurangabad. Thereafter, the plaintiffs/respondents filed Title Suit No. 115/1987 against these orders before the court of learned Munsif, Aurangabad.

3. The case of the original plaintiff in the Title Suit was that his father died during his minority and his entire land was made *Bakast* without any auction sale and the same was settled to Girija Prasad and Smt. Rumini Devi by Ex-landlord and they were granted rent receipts. The plaintiff further claimed that after he attained majority, he raised dispute questioning settlement and entered into an agreement with the settlees in the year 1949 and since then he has been coming in possession of the suit land.

4. The defendants/petitioners filed their written statement denying the right, title and possession of the plaintiff over the suit land and the suit was dismissed vide judgment and decree dated 22.08.2002 and 22.11.2002 holding that no relief for declaration of title and confirmation of possession had been



sought and also on the ground that the plaintiff failed to produce the copy of orders under challenge.

5. Against the dismissal of suit, the plaintiff preferred Title Appeal No. 43 of 2002/05 of 2005 before the learned District Judge, Aurangabad and during pendency of the said appeal, the original plaintiff died on 26.10.2004 and the names of his legal representatives-the present plaintiffs/respondents were substituted.

6. During pendency of the appeal, the plaintiffs/respondents filed a petition on 07.04.2012 for amendment of relief portion by adding the words “the plaintiff is owner in possession over the suit property and acquired valid title thereon and defendant has no right, title in the suit property” after the word decree in relief portion, which was dismissed vide order dated 17.05.2012/18.05.2012 passed by learned Additional District Judge-I, Aurangabad. This rejection order dated 17.05.2012 was challenged by the plaintiffs/respondents by filing CWJC No. 12447/2012 which was subsequently dismissed as withdrawn vide order dated 20.08.2013 passed by this Court. Thereafter, vide judgment dated 11.12.2013, the appellate court remanded the title suit for deciding it afresh to the learned lower court after framing of



issues.

7. Thereafter, on 12.08.2016, the plaintiffs/respondents filed a petition before the learned trial court for amendment in relief portion of suit for adding reliefs for declaration of title and confirmation of possession, which was objected by defendants/petitioners by filing rejoinder dated 19.08.2016 to the said petition. The learned Munsif, Aurangabad vide order dated 09.09.2016 passed in Title Suit No. 115/1987 allowed the amendment petition dated 19.08.2016, which has been impugned in the present petition.

8. It has been submitted on behalf of the defendants/petitioners that the learned lower court failed to appreciate that the amendment seeking incorporation of relief of declaration of title and confirmation of possession at such belated stage, i.e., after 28 years of filing of the suit and 27 years of filing of the written statement denying title and possession of the plaintiffs was barred by law of limitation. At the same time, learned lower court also did not consider the fact that similar amendment petition was rejected by the learned appellate court and the petition challenging the same in the writ petition was withdrawn and the matter has attained finality. So, the learned lower court ought to have considered that the



amendment petition was barred by principles of *res judicata*. Thus, it has been submitted that the impugned order is bad in the eyes of law and the same needs to be set aside.

9. The plaintiffs/respondents filed their counter affidavit denying the case of the defendants/petitioners.

10. It has been submitted on behalf of the respondents that after the appeal was disposed of by the learned lower appellate court, the judgment and decree of the court of learned Munsif in Title Suit No. 115/1987 was set aside and the matter had been remanded from the stage of framing of issues in the suit. Thus, everything has become open to be decided by the learned court below. After remand of the matter by the learned first appellate court, the amendment petition has been filed and the same was rightly allowed by the learned Munsif. It has been further submitted by the respondents that after the remand for hearing the matter afresh, the amendment petition is not time barred. Similarly, the earlier order of refusal of the amendment was sought by the plaintiffs on a different cause of action prevailing on that point of time. But after judgment in Title Appeal No. 43/2002/05/2005, the cause of action has changed, therefore, principles of *res judicata* would not be applicable.

11. The learned counsel appearing on behalf of the



petitioners vehemently contended that the amendment petition was hopelessly time barred as the same was filed after 28 years of filing of the original title suit. Thus, the period of limitation was not considered by the learned lower court. The learned counsel further submitted that the remand was only for limited purpose, the learned appellate court came to the finding that the learned lower court had not framed the issues as per Order 14 Rule 1 of the Code of Civil Procedure (hereinafter referred to as 'the CPC') and the judgment was pronounced without framing the issues. Accordingly, title appeal was allowed and the judgment and decree passed by the learned lower court were set aside and the matter was remanded to the learned lower court for deciding afresh after framing of issues on all points. The learned counsel further submitted that it was not open for the learned lower court to allow amendment after the remand has been made to it. The suit cannot be treated as freshly instituted on the date of remand. The learned counsel relied on the decision of Hon'ble Apex Court in the case of ***United Bank of India Vs. Abhijit Tea Co. Pvt. Ltd. and Others***, reported in ***(2000) 7 SCC 357*** wherein it has been held in paragraph 16 as under :

“16. But, it is now well settled that an order of remand by the appellate court to the trial court



which had disposed of the suit revives the suit in full except as to matters, if any, decided finally by the appellate court. Once the suit is revived, it must, in the eye of the law, be deemed to be pending — from the beginning when it was instituted. The judgment disposing of the suit passed by the Single Judge which is set aside gets effaced altogether and the continuity of the suit in the trial court is restored, as a matter of law. The suit cannot be treated as one freshly instituted on the date of the remand order. Otherwise serious questions as to limitation would arise. In fact, if any evidence was recorded before its earlier disposal, it would be evidence in the remanded suit and if any interlocutory orders were passed earlier, they would revive. In the case of a remand, it is as if the suit was never disposed of (subject to any adjudication which has become final, in the appellate judgment). The position could have been different if the appeal was disposed of once and for all and the suit was not remanded”.

12. Further, it has been submitted by learned counsel for the petitioners that the learned trial court ought to have taken into consideration the fact that the relief claimed by the plaintiffs/defendants and sought to be incorporated by way of amendment petition has become time barred. The learned counsel further relied on another decision of Hon’ble Supreme Court in the case of ***Pandit Malhari Mahale Vs. Monika***



Pandit Mahale and Ors. reported in ***(2020) 11 SCC 549*** on the point that the court has not returned any finding that in spite of due diligence, the party could not have raised the matter before the commencement of trial. Paragraphs 6, 7 and 8 of the said decision read as under :

“6. From the evidence on record, it does appear that evidence had begun and thereafter amendment application was filed. Without there being any finding by the Court as contemplated by Order 6 Rule 16 proviso, the Court ought not to have allowed the amendment.

7. In the present case, the Civil Judge has not returned any finding that the Court is satisfied that in spite of due diligence, the party could not have raised the matter before the commencement of trial. In Vidyabai v. Padmalatha [Vidyabai v. Padmalatha, (2009) 2 SCC 409 : (2009) 1 SCC (Civ) 563] , this Court observed in para 19 as under: (SCC p. 416)

“19. It is the primal duty of the court to decide as to whether such an amendment is necessary to decide the real dispute between the parties. Only if such a condition is fulfilled, the amendment is to be allowed. However, proviso appended to Order 6 Rule 17 of the Code restricts the power of the court. It puts an embargo on exercise of its jurisdiction. The court's jurisdiction, in a case of this nature is limited. Thus, unless the jurisdictional fact, as envisaged therein, is found to be existing, the court



will have no jurisdiction at all to allow the amendment of the plaint.”

8. There being no finding by the Court that the Court is satisfied in spite of due diligence, the party could not introduce amendment before commencement of the trial, the order of the trial Judge is unsustainable. The High Court has not adverted to the above aspect of the matter. In view of aforesaid, we allow the appeal and set aside the order [Pandit Malhari Mahale v. Monika Pandit Mahale, 2018 SCC OnLine Bom 11687] of the High Court as well as of the Civil Judge, the amendment application stands dismissed”.

13. The learned counsel for the petitioners further reiterated that the prayer for amendment was also made before the learned appellate court which was denied and the same prayer was made before the learned lower court. Hence, it is hit by principle of *res judicata*. Thus, the learned counsel has submitted that the order dated 09.09.2016 passed by the learned Munsif, Daudnagar, Aurangabad in T.S.No. 115 of 1987 has got no merit and the same be set aside and the instant petition be allowed.

14. The learned counsel appearing on behalf of the respondents vehemently opposed the submission made on behalf of the petitioners. The learned counsel submitted that



learned lower court allowed the amendment petition after due consideration of facts. Once the learned first appellate court remanded the matter for consideration afresh, all issues became open and it was also directed that the suit be decided after framing of issues. So, at the initial stage of title suit, the plaintiffs/respondents moved application for amendment and since the matter has been considered to be pending, there would be no bar of limitation. Moreover, the learned lower court has recorded an unequivocal finding that title and possession of plaintiffs over the suit land is matter in issue and proposed amendment was necessary for the purpose of deciding question in controversy between the parties and refusal to amend the plaint would create needless complication. The amendment sought is imperative for proper and effective adjudication of the case and the same would not cause prejudice to the other side. Taking into consideration all these facts, the learned lower court allowed the amendment petition and order dated 09.09.2016 is clearly sustainable. The learned counsel has relied upon a decision in the case of ***Canara Bank Vs. N.G. Subbaraya Setty and another*** reported in AIR 2018 SC (Civil) 2609 on the point that a decision would operate as *res judicata* only if the cause of action of subsequent proceeding would be the same as in the



previous proceeding. Here, the cause of action is different in the proceeding before the learned first appellate court and the learned trial court.

15. Further, a decision on an issue of law will operate as *res judicata* in a subsequent proceeding between the same parties, if the cause of action of the subsequent proceeding be the same as in the previous proceeding, but not when the cause of action is different, nor when the law has since the earlier decision being altered by a competent authority, nor when the decision relates to the jurisdiction of the court to try the earlier proceeding, nor when the earlier decision declares valid a transaction which is prohibited by law.

16. The learned counsel also relied on the decision in the case of ***Nitya Nand Singh Vs. M/s Aditya Cooperative Housing Society Ltd. and Anr.***, reported in ***2011 SCC Online Pat 237 : (2011) 3 PLJR 728*** on the point that allowing the petitioner to withdraw a case is an order and it cannot be said to be a judgment or decree and there will be no application of *res judicata*.

17. Perused the records.

18. By moving an amendment petition, the plaintiffs/respondents have proposed the following



amendments:-

“A1 :- Be decreed and declared that the plaintiff has title over the suit land and the possession of the plaintiff over the suit land be confirmed.

A2 :- The defendants be injuncted from making any interference in the peaceful cultivating possession of the plaintiff over the suit land.

If the plaintiffs were dispossessed by the defendants from the possession of the suit land during pendency of the suit, the plaintiffs possession over the suit land be restored by the process of law.”

19. These amendments were sought in the relief portion as the reliefs initially claimed by the plaintiff read as under :-

“(A) It may be declared and decreed that the order passed by the Learned Executive Magistrate dated 19.04.1984 and order passed by Additional Sessions Judge-IV dated 23.05.1987 is illegal, inoperative and against the fact and law and not binding on plaintiff.

(B) Cost of the suit may be accorded to the plaintiff.

(C) Any other relief or reliefs



which cannot may deem fit and proper awarded to the plaintiff”.

20. Bare reading of the relief shows it is a good example of badly drafted plaint. Subsequent events like filing of the amendment petition before the first appellate court and after its rejection, filing of CWJC No.12447 of 2012 and its subsequent withdrawal also goes against the interest of the plaintiffs/respondents. The petitioners have assailed the order of learned Munsif, Daudnagar, Aurangabad mainly on three grounds:- firstly that it was filed at a very belated stage and the same was hit by limitation, secondly filing of the amendment petition before the learned appellate court seeking similar relief and its rejection and subsequent withdrawal of writ petition challenging the said rejection order will operate as bar under the principles of res judicata and thirdly, the learned lower court while allowing the amendment petition has not recorded any findings that in spite of due diligence, the party could not have raised the matter before the commencement of trial.

21. Before adverting to the submission of the parties, it would be beneficial to look into the provisions of amendment under Order 6 Rule 17 of the CPC, which reads as under :

“17. Amendment of pleadings.—The Court may at any stage of the proceedings allow



either party to alter or amend his pleading in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties:

Provided that no application for amendment shall be 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”.

22. Further, the Hon’ble Supreme Court in the case of ***Life Insurance Corporation of India v. Sanjeev Builders (P) Ltd.***, reported in ***2022 SCC OnLine SC 1128***, summarized the law on the point of amendment in paragraph 70 in the following manner :

“70. Our final conclusions may be summed up thus:

(i) Order II Rule 2 CPC operates as a bar against a subsequent suit if the requisite conditions for application thereof are satisfied and the field of amendment of pleadings falls far beyond its purview. The plea of amendment being barred under Order II Rule 2 CPC is, thus, misconceived and hence negatived.

(ii) All amendments are to be allowed which are necessary for determining the real



question in controversy provided it does not cause injustice or prejudice to the other side. This is mandatory, as is apparent from the use of the word “shall”, in the latter part of Order VI Rule 17 of the CPC.(iii) The prayer for amendment is to be allowed

(i) if the amendment is required for effective and proper adjudication of the controversy between the parties, and

(ii) to avoid multiplicity of proceedings, provided

(a) the amendment does not result in injustice to the other side,

(b) by the amendment, the parties seeking amendment does not seek to withdraw any clear admission made by the party which confers a right on the other side and

(c) the amendment does not raise a time barred claim, resulting in divesting of the other side of a valuable accrued right (in certain situations).

(iv) A prayer for amendment is generally required to be allowed unless

(i) by the amendment, a time barred claim is sought to be introduced, in which case the fact that the claim would be time barred becomes a relevant factor for consideration,

(ii) the amendment changes the nature of the suit,

(iii) the prayer for amendment is



malafide, or

(iv) by the amendment, the other side loses a valid defence.

(v) In dealing with a prayer for amendment of pleadings, the court should avoid a hypertechnical approach, and is ordinarily required to be liberal especially where the opposite party can be compensated by costs.

(vi) Where the amendment would enable the court to pin-pointedly consider the dispute and would aid in rendering a more satisfactory decision, the prayer for amendment should be allowed.

(vii) Where the amendment merely sought to introduce an additional or a new approach without introducing a time barred cause of action, the amendment is liable to be allowed even after expiry of limitation.

(viii) Amendment may be justifiably allowed where it is intended to rectify the absence of material particulars in the plaint.

(ix) Delay in applying for amendment alone is not a ground to disallow the prayer. Where the aspect of delay is arguable, the prayer for amendment could be allowed and the issue of limitation framed separately for decision.

(x) Where the amendment changes the nature of the suit or the cause of action, so as to set up an entirely new case, foreign to the case set up in the plaint, the amendment must be disallowed.



Where, however, the amendment sought is only with respect to the relief in the plaint, and is predicated on facts which are already pleaded in the plaint, ordinarily the amendment is required to be allowed.

*(xi) Where the amendment is sought before commencement of trial, the court is required to be liberal in its approach. The court is required to bear in mind the fact that the opposite party would have a chance to meet the case set up in amendment. As such, where the amendment does not result in irreparable prejudice to the opposite party, or divest the opposite party of an advantage which it had secured as a result of an admission by the party seeking amendment, the amendment is required to be allowed. Equally, where the amendment is necessary for the court to effectively adjudicate on the main issues in controversy between the parties, the amendment should be allowed. (See *Vijay Gupta v. Gagninder Kr. Gandhi*, 2022 SCC OnLine Del 1897)”*

23. No doubt, there is merit in the contention of the learned counsel for the petitioners that after remand the suit cannot be treated as one freshly instituted. However, the fact cannot be lost sight of that the purpose of allowing the amendment is for determination of real question in controversy. The prayer for amendment is to be allowed if the amendment is



required for effective and proper adjudication of controversy between the parties and to avoid multiplicity of the proceedings. But the same is subject to some notable exceptions. The amendments should not result in injustice to other side. By the amendment, the party seeking amendment does not seek to withdraw any clear admission made by the party which confers a right on the other side and the amendment does not raise a time barred claim, resulting in depriving the other side of a valuable accrued right in certain situations. Of course it goes without saying that the amendment should not change the nature of the suit and it should not be malafide and other side does not lose a valid defence.

24. Now coming back to the facts of the case, as observed earlier, the relief sought by the plaintiff reflects poor drafting and by stretch of imagination it could be said that on the basis of such relief, real question in controversy could be determined and there will be effective and proper adjudication of the dispute between the parties. If moving amendment at this stage infringes some right which accrued in favour of other parties by passage of time, the learned trial court, which is yet to frame the issues, can take notice of it and if any amendment is allowed, naturally the other side would have a right to rebut on



the point raised through amendment and the same cannot be said to have caused prejudice to the other side. The amendment sought by the plaintiffs/respondents is with regard to declaration of title and confirmation of possession. If there is any question of limitation, at this stage, it would be a mixed question of law and fact to be decided by the learned lower court and the learned lower court would be required to frame issue on this point and decide the same. Reliance could be placed on the decision of the Hon'ble Apex Court in the matter of *LIC v. Sanjeev Builders (P) Ltd.* (supra).

25. So far as due diligence on the part of the plaintiffs is concerned, it is to be seen whether the proviso appended to Order 6 Rule 17 of the Code is applicable in the instant case. The proviso appended thereto was added by the Code of Civil Procedure (Amendment) Act, 2002 which came into force with effect from 01.07.2002. Now Section 16(2)(b) of the amending Act, 2002 reads as under :

“the provisions of Rules 5, 15, 17 and 18 of Order VI of the First Schedule as omitted or, as the case may be, inserted or substituted by Section 16 of the Code of Civil Procedure (Amendment) Act, 1999 and by Section 7 of this Act shall not apply to in respect of any pleading filed before the commencement of Section 16 of the code of Civil Procedure (Amendment) Act, 1999 and Section 7



of this Act”.

26. In the instant case, the title suit has been filed in the year 1987 and even after remand, it would not be treated as a freshly instituted suit. For this reason, proviso to Order 6 Rule 17 of the Code shall not apply and there was no requirement for recording the finding by the learned lower court about satisfaction regarding due diligence. Reliance in this regard could be made on the decision of the Hon’ble Supreme Court in the case of ***State Bank of Hyderabad v. Town Municipal Council***, reported in ***(2007) 1 SCC 765***.

27. Moreover, in the instant case, the trial is yet to commence since the issues are yet to be framed, there would not be any application of proviso to Order 6 Rule 17 of the Code in the instant matter.

28. Another issue which has been raised is regarding *res judicata* being applicable in case of the amendment application before the learned trial court. This objection is based on the fact that the plaintiff earlier moved an application for amendment before the first appellate court which dismissed it and the same was challenged by way of filing a writ petition before this Court which was subsequently withdrawn. So, it is the contention of learned counsel for the petitioners that if any order was passed by the learned appellate court during pendency



of the appeal, the same attained finality after withdrawal of the writ petition challenging the said order. After revival of the suit, the said rejection order on amendment petition of the plaintiff would operate as *res judicata* and preclude the plaintiff from filing another application with similar prayer.

29. Now, Section 11 of the CPC reads as under :

“11. Res judicata.—*No Court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a Court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such Court”.*

The doctrine of *res judicata* belongs to domain of procedure. Its purpose is to give finality to the litigation. As submitted on behalf of the respondents that there would be no application of *res judicata* since the cause of action is different in subsequent proceeding. The contention has got some merit.

Though trite, still it is pertinent to remind ourself that the procedural laws are handmaid and not the mistress in administration of justice, they are intended to facilitate and not to obstruct the course of substantive justice. A procedural



prescription acts as a lubricant and not a resistant in the administration of justice. The object prescribing procedure is to advance the cause of justice and not to shut the doors and justice for the parties at the very threshold. The Hon'ble Supreme Court in the case of ***Sambhaji and Ors. Vs. Gangabai and Ors.*** reported in (2008) 17 SCC 117 in similar situation has held as under :-

“The processual law so dominates in certain systems as to overpower substantive rights and substantial justice. The humanist rule that procedure should be the handmaid, not the mistress, of legal justice compels consideration of vesting a residuary power in the Judges to act ex debito justitiae where the tragic sequel otherwise would be wholly inequitable. Justice is the goal of jurisprudence, processual, as much as substantive...

No person has a vested right in any course of procedure. He has only the right of prosecution or defence in the manner for the time being by or for the court in which the case is pending, and if, by an Act of Parliament the mode of procedure is altered, he has no other right than to proceed according to the altered mode. ... A procedural law should not ordinarily be construed as mandatory; the procedural law is always subservient to and is in aid to justice. Any interpretation which eludes or frustrates the recipient of justice is not to be followed. ...



Processual law is not to be a tyrant but a servant, not an obstruction but an aid to justice. Procedural prescriptions are the handmaid and not the mistress, a lubricant, not a resistant in the administration of justice.”.

30. Again coming back to the facts of the case, the plaintiffs/respondents sought relief against the orders of learned Executive Magistrate and learned Additional Sessions Judge-IV to be illegal and inoperative in fact and not binding on the plaintiffs when the matter relates to dispute over title and possession of the suit property. So not allowing the amendment would only result in injustice to the parties and multiplicity of litigation. It goes without saying that unless the amendment is allowed, there could be no effective and proper adjudication of controversy between the parties since it is necessary for determining the real question in controversy. Therefore, the order passed by the learned lower court allowing the amendment petition is quite in order and there is no illegality or infirmity in it. But considering the delay, I think the other side should be adequately compensated in terms of money.

31. In the light of discussions made so far, I do not find the objections raised by the learned counsel for the petitioners on any of the counts are sustainable and hence, I do not find any merit in the instant petition. Accordingly, the



impugned order dated 09.09.2016 passed by learned Munsif, Aurangabad is affirmed but subject to cost of Rs. 25,000/- (twenty five thousand only) to be paid by the plaintiffs to the defendants within one month from the date of passing of this judgment for the delay in moving the amendment petition.

32. In the result, the instant petition is dismissed.

33. However, it is made clear that any observation touching upon the merits is only with regard to disposal of the present petition and I have not expressed any opinion on merits on the stand taken by both the parties in suit and it is for the trial court to dispose of the suit on its own merit without being influenced by any of the observations made above within a period of six months from the date of receipt/production of a copy of this judgment since it is a very old matter.

(Arun Kumar Jha, J)

V.K.Pandey/-

AFR/NAFR	A.F.R.
CAV DATE	30.11.2023
Uploading Date	22.12.2023
Transmission Date	N.A.

