

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

957 WRIT PETITION NO.3789 OF 2017

BABASAHEB PANDURANGRAO JADHAV AND OTHERS

VERSUS

SHAIKH JAVED SHAIKH NASIR

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Advocate for Petitioners : Mr. M.S. Karad
h/f. Mr. Thombre S.S.

Advocate for Respondent : Mr. Virdhe Bhushan V.

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CORAM : SHAILESH P. BRAHME, J.

DATE : 01st DECEMBER, 2023

PER COURT :

1. Heard learned counsel for both the sides finally at the admission stage.
2. The petitioners are original plaintiffs who are aggrieved by the impugned order permitting the respondent – defendant, to amend the written statement after commencement of trial.
3. The petitioners have filed RCS No. 89 of 2010, for possession against the respondent. After the evidence of the petitioners is recorded, the respondent came up with his application Exhibit 79 under Order VI Rule 17 of the Code of Civil Procedure, seeking to incorporate pleadings vide additional paragraph nos. 9-A, 9-B and 9-C. The application is objected by the petitioners on various grounds.

Learned Judge allowed application Exhibit 79 by order dated 13th January, 2017. Hence, the petitioners are before this Court.

4. Learned counsel for the petitioners submits that it is impermissible to permit the respondent to amend written statement after commencement of trial when there is absolutely no due diligence. Learned counsel would submit that proposed amendment is not necessary and the same is changing nature of plaint. He would submit that the proposed pleadings are false and denied.

5. Learned counsel for the petitioners has drawn my attention to the paragraph no. 12 of petitioner's say and paragraph no. 8 of the written statement. He would submit that paragraph nos. 8 and 9 of the plaint which are pertaining to the territorial and pecuniary jurisdiction of the Court, are admitted. The proposed amendment in paragraph no. 9-C divests the admission given by paragraph no. 8 of the written statement.

6. Learned counsel submits that the Trial Court has committed error of jurisdiction and perversity in allowing application Exhibit 79 when evidence of the plaintiff was over. Learned counsel has referred to the judgment rendered in *Shraddha Developers and others Versus Ravindra Ganpatrao Bharitkar and others*, **2012 (6) Mh.L.J. 348**.

7. Per contra, learned counsel for the respondent-defendant supports impugned order. He submits that as the proposed amendment is in the form of law points no prejudice would be caused by permitting to

amend the written statement. According to him, learned Judge has rightly considered the circumstances compelling the respondent to amend the written statement. According to him, there is no admission as such as is tried to be contended by the petitioner from paragraph no. 8 of written statement.

8. I have considered rival submissions of the litigating sides. The application Exhibit 79 was presented when evidence of the petitioners-plaintiffs was over. It is not that after commencement of the trial the parties are not permitted to amend the pleadings at all. If due diligence is established and for exceptional circumstances Court has power to permit amendment to the pleadings. What is most relevant factor is the Court has to see whether the proposed amendment is necessary to decide controversy involved in the litigation.

9. I do not approve the finding that plea of non-joinder of necessary party as proposed in paragraph no. 9-A, the plea of not claiming relief as proposed in paragraph no. 9-B or plea proposed in paragraph no. 9-C are purely question of law.

10. A plea proposed in paragraph no. 9-A, regarding non-joinder of necessary party is necessary to decide controversy involved in the suit. Similarly, the plea proposed in paragraph no. 9-B regarding not claiming the relief available and the plea of limitation are also necessary

to decide the controversy. Though, the proposed amendment are sought belatedly that cannot be denied.

11. So far as proposed amendment in paragraph no. 9-C is concerned, learned Judge has totally over looked pleadings in paragraph no. 8 of written statement as well as pleadings in paragraph no. 9 of plaint. The respondent has chosen not to raise any specific or additional plea so far as pecuniary jurisdiction is concerned stated in paragraph no. 9 of the plaint. By proposed amendment, the pecuniary jurisdiction is challenged on account of valuation. In my view, this amounts to divesting of the admission. The amendment proposed by paragraph no. 9-C about valuation and jurisdiction should not have been allowed. It is error of jurisdiction committed by learned Judge to that extent.

12. Learned Judge has not taken into account that the amendment to the written statement is not actuated by any subsequent events. Permitting to amend written statement will have repercussions in prolonging the matter. Therefore, costs should have been imposed in allowing application Exhibit 79. I, therefore, pass following order :

ORDER

- i. Writ Petition is partly allowed.
- ii. The application Exhibit 79 stands allowed to the extent of proposed amendment of paragraph no. 9-A and 9-B only

and it stands rejected to the extent of proposed paragraph no. 9-C.

iii. The respondent shall pay costs of Rs. 5,000/- (Rupees five thousand) to the petitioner within a period of two weeks.

iv. The Trial Court is requested to decide the suit expeditiously.

[SHAILESH P. BRAHME, J.]