

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.2704 OF 2023

Dilip S/o. Prabhakar Rao Khot	 Petitioner
Versus	
Balaji S/o. Nivrutti Karhale	
and others	 Respondents

.....
Mr. Anand S. Deshpande, Advocate for the Petitioner
.....

[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 09th MARCH, 2023

ORDER :

1. The petitioner is aggrieved by the order passed by learned Civil Judge, Junior Division, Aundha Nagnath below Exhibit-17 in Regular Civil Suit No.36 of 2017, thereby allowing the application of respondents under Order VI Rule 17 of the Code of Civil Procedure.

2. By the said application, the plaintiff sought proposed amendment that defendant Nos.1 and 2 be directed to pay means profit of Rs.2,00,000/- of the suit property to the plaintiff.

3. Learned advocate strenuously submits that the said amount of Rs.2,00,000/- is of 10 years, which is not permissible in law. According to him means profit cannot be claimed beyond 3 years prior to institution of the suit. In

support of his contention, he relied on *Indira Bhalchandra Gokhale since deceased by her Executors Ganesh Mahadeo Divekar and others Vs. Union of India and another; 1990 Mh.L.J. 1056.*

4 It is settled legal position that means profit cannot be claimed of more than the period of 3 years prior to institution of the suit. The ratio in the citation relied upon by the petitioner is the same.

5. Merely because of amendment is permitted, it does not mean that the trial Court has allowed the prayer of the respondent. The same will have to be considered on merits by the trial Court.

6. In that view of the matter, this Court is of the considered view that no interference is called for in the impugned order passed by the trial Court. The trial Court shall consider the said prayer on merits in accordance with law.

7. With these observations, the writ petition is disposed of.

[NITIN B. SURYAWANSHI]
JUDGE

S.P. Rane