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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.3977 OF 2023

Pratapsingh Bapusingh Thakur and Others PETITIONERS

VERSUS

Balusingh Bapusingh Thakur and Others RESPONDENTS

.....
Mr. A. A. Joshi h/f Mr. Sharad V. Natu, Advocate for petitioners
.....

[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 9th JUNE, 2023

ORDER :

1. By this petition, filed under Article 227 of the Constitution of India, the petitioners challenge order dated 6th January, 2023 passed by 4th Joint Civil Judge, Senior Division, Latur below Exhibit-87 in Special Civil Suit No. 92 of 2015, thereby rejecting the application filed by the petitioners – original defendants, under Order VI, Rule 17 of the Civil Procedure Code.
2. The respondent No.1 – plaintiff filed the suit for partition, separate possession and declaration. The petitioners – defendants appeared and opposed the suit, by filing written statement.
3. Thereafter, the defendants filed application Exhibit-87

seeking amendment in paragraph No. 5 of the written statement. The said application is rejected by the Trial Court. Hence, the present writ petition.

4. Heard learned advocate for the petitioners. Though served, none appears for respondents No.1 to 4. Perused the memo of writ petition and the documents annexed with the same.

5. The amendment application is rejected by the Trial Court holding that the defendants are trying to withdraw the admission given in the written statement and there is lack of due diligence on the part of the defendants in filing the application.

6. The proposed amendment appears to be by way of explanation of the averments made in paragraph No.5 of the written statement. It is settled legal position that inconsistent plea can be taken by the defendants in the written statement. The approach on the part of the learned Trial Judge, in rejecting the amendment application is erroneous and unsustainable. The impugned order, therefore, cannot be sustained.

7. In the result, the writ petition is allowed. Impugned order dated 6th January, 2023 passed by 4th Joint Civil Judge, Senior Division, Latur below Exhibit-87 in Special Civil Suit No. 92 of 2015 is hereby quashed and set aside. Application Exhibit-87 is

allowed, subject to petitioners paying costs of Rs.10,000/- to respondent No.1 – plaintiff in the Trial Court, within four weeks from the date of receipt of writ of this order.

[NITIN B. SURYAWANSHI]
JUDGE

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