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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.6035 OF 2021

Chief Executive Officer, Zilla Parishad,
Nanded and Another

PETITIONERS

VERSUS

Charansingh Hujurasingh Ramgadia (Died) LRs
and Another

RESPONDENTS

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Mr. Nitin S. Kadam, Advocate for the petitioners
Mrs. G. L. Deshpande, AGP for respondent - State
Mr. Rahil Kazi h/f Mr. P.R. Katneshwarkar, Advocate for
respondents No.1B and 1C.

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[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 12th APRIL, 2023

ORDER :

1. Being aggrieved by order dated 25th February, 2021 passed by Civil Judge, Senior Division, Nanded below Exhibit-176 in Special Civil Suit No. 86 of 2007 thereby rejecting the application filed by the petitioners – defendants No.2 and 3 seeking amendment to the written statement, the petitioners have filed present writ petition.

2. The respondents – plaintiffs have filed the suit for declaration and injunction and for fixation of boundaries between land Survey No. 13 and 14. The defendants appeared and

resisted the suit, by filing written statement. Issues were framed and plaintiffs filed their evidence affidavit. Thereafter, present application Exhibit-176 is filed by defendants No.2 and 3 seeking amendment to the written statement, which is rejected by the Trial Court on the ground of delay and since the trial has commenced. Hence, the present writ petition.

3. Heard learned advocate for the petitioners, learned advocate for respondents No.1B and 1C and the learned Assistant Government Pleader for the State. Perused the grounds raised in the writ petition, documents annexed with the same and the impugned order.

4. Learned advocate for the respondent – plaintiffs vehemently opposed the petition contending that the defendants are interested only in prolonging the suit. Twice, “no cross” order was passed against the petitioner – defendants and the present application is filed after lapse of almost 12 years’ period. He, therefore, submits that the petitioners are not entitled for any discretionary relief.

5. By way of amendment, the petitioners wanted to bring on record the documents procured by them in respect of the suit property which would enable the Trial Court to effectively

adjudicate the controversy between the parties.

6. The Trial Court, is right in holding that there is inordinate delay in filing present application, but for lack of due diligence the plaintiffs could have been adequately compensated. Through trial has commenced in the present case, for effective adjudication of the dispute between the parties and to avoid multiplicity of proceedings, it is desirable to allow the amendment.

7. For the aforesaid reasons, following order :

ORDER

- I. Writ Petition is allowed.
- II. Impugned order dated 25th February, 2021 passed by Civil Judge, Senior Division, Nanded below Exhibit-176 in Special Civil Suit No. 86 of 2007 is quashed and set aside.
- III Application Exhibit-176 is allowed.
- IV. Amendment to be carried out within a period of two weeks from the date of receipt of writ of this order.
- V. Parties are entitled for recalling of witnesses in case they think it necessary, pursuant to the amendment.

- VI. Petitioners shall pay costs of Rs.25,000/- to the plaintiffs in the Trial Court, within a period of four weeks from the date of receipt of writ of this order.
- VII. Parties shall co-operate for expeditious disposal of the suit.

[NITIN B. SURYAWANSHI]
JUDGE