

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.8573 OF 2022

Shamsundar Kashinath Zawar
Since deceased through L.Rs.
Manish Shamsundar Zawar
and others

.... Petitioners

Versus

Ashok Chimanlal Lotwala
deceased through through his L.Rs.
Bhariben Ashokkumar Lotwala
and others

.... Respondents

.....

Mr. Sushilkumar H. Tripathi, Advocate for the Petitioners
Mr. Subhodh P. Shah, Advocate for the Respondent Nos.1 to 5

.....

[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 16th JUNE, 2023

ORDER :

1. Being aggrieved by the impugned common order passed by the learned District Judge-1, Jalgaon, below Exhibits 22 and 24 in Regular Civil Appeal No.897 of 2012, the petitioners have preferred this writ petition under Article 227 of the Constitution of India.

2. Special Civil Suit No.143 of 1997 was filed by respondent No.1/plaintiff for specific performance of contract. The suit was partly decreed, the prayer of plaintiff for specific performance of contract was rejected, and the plaintiff was

held entitled to receive an amount of Rs.1,25,000/-. Being aggrieved, respondent No.1/plaintiff filed Regular Civil Appeal No.897 of 2012. When the appeal was at the stage of final hearing, respondent No.1/plaintiff filed application Exhibit-22 under Order VI Rule 17 seeking amendment in view of subsequent developments. Application Exhibit-24 is filed for leading additional evidence. By common order impugned in the present petition, both the applications are allowed. The petitioners are aggrieved by the same.

3. Heard the learned advocate for the petitioners and the learned advocate for the respondents. Perused the writ petition memo, annexures thereto, and the impugned order.

4. Learned advocate for the petitioners strenuously urged that there is total lack of due diligence on the part of respondent No.1 in filing the application Exhibit-22. He submits that, in fact, the subsequent event of which the proposed amendment is sought by the petitioner had taken place in the year 2013, whereas the application is filed by respondent No.1 on 07/06/2021. Thus, there is inordinate delay in moving application, and on that ground alone, the Appellate Court ought to have rejected the said application.

He submitted that the Appellate Court has committed an error in allowing application Exhibit-24.

5. Learned advocate for the respondents supports the impugned order.

6. In application Exhibit-22, a specific averment is made that during the pendency of Appeal, and when the same was at the stage of final argument, from the news in the local newspaper, legal heirs of respondent/plaintiff came to know that some portion of the suit land is acquired for four laning of National Highway. On going through the plaint, they realized that on the northern side of the suit land, there is Erandol-Jalgaon National Highway. Accordingly, enquiry was made and documents were obtained, and it was realized that out of the suit property, 1100 Sq. Mtrs. area is acquired for four laning of the National Highway, and award of initial compensation amount of Rs.3,22,794/- is passed in favour of the defendant/petitioner.

7. Since the amendment pertains to the subsequent events, in my view, the Appellate Court is justified in allowing the application for amendment. As the amendment application is allowed, the Appellate Court has also rightly allowed

application Exhibit-24, thereby granting permission to lead additional evidence at the stage of final hearing. No illegality or perversity is found in the order impugned in the present petition. The writ petition being devoid merit is dismissed.

[NITIN B. SURYAWANSHI]
JUDGE

S.P Rane