

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.6828 OF 2023

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| 1. Abdul Rehman Naser Mohammad Chaudhari
2. Walipasha Naser Mohammad Chaudhari
3. Hanu Naser Mohammad Chaudhari
4. Muktar Naser Mohammad Chaudhari
5. Noorpasha Naser Mohammad Chaudhari | Petitioners
[Ori. Defendants] |
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Versus

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| 1. Pramod Ramkrushna Ambure
2. Mangesh Pradip Ambure
3. Renuka Pradip Ambure | Respondents
[Ori. Plaintiffs] |
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Mr. N.N. Jagdale h/f. Mr. V.D. Salunke, Advocate for the petitioners.

Mr. A.T. Jadhavar, Advocate for respondents.

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[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 8th AUGUST, 2023

ORDER :

1. Leave to correct the prayer clause.
2. Petitioners are aggrieved by the order passed by learned Civil Judge, Junior Division, Ausa, Latur, below Exhibit-184 in Regular Civil Suit No. 326/2016, thereby partly allowing the application filed by respondents/plaintiffs for amendment of plaint.
3. Petitioners earlier approached this Court by filing Writ Petition No. 4263 of 2017, challenging the order dated

30.11.2016, passed in Miscellaneous Civil Appeal No. 70/2016, thereby dismissing the appeal filed by the petitioners and interim status quo order which was in operation was vacated. While disposing of the writ petition, this Court observed that, "*on 5th April 2017 this Court had directed that the tin shed erected by the petitioner shall be removed. This position continues till today.*" This Court, therefore, directed learned Civil Judge, Junior Division, Ausa, to decide Regular Civil Suit No. 326/2016 within a period of six months from the date of the order, by observing that "*the position as directed to be maintained by interim order passed by this Court shall be continued till the conclusion of the civil suit.*"

4. After remand by this Court, respondents/plaintiffs filed application Exhibit-184 for amendment of the plaint contending that the tin shed was erected during the pendency of the suit, therefore, there is no averment or pleading in the plaint in respect of erected tin shed. Hence, they prayed for leave to amend the plaint and prayer clauses. This application is partly allowed and the defendants are aggrieved by this order.

5. Heard the learned advocate for the petitioners and learned advocate for the respondents. Perused the memo of writ

petition, annexures and the impugned order.

6. Learned advocate for the petitioners assailed the impugned order contending that the limitation for claiming said relief is of three years and same is already over. In that view of the matter, the Trial Court ought not to have allowed the amendment.

7. It is well settled that amendments are to be liberally allowed, so as to avoid multiplicity of proceedings. It appears that the tin shed is erected during the pendency of suit and hence there are no averments in the plaint about it. Considering the statements made in the amendment application, Trial Court is justified in passing the impugned order, thereby partly allowing the application filed by respondent/plaintiff. No illegality or perversity is found in the order impugned in the present petition. No case is made out by the petitioners to warrant interference in the extra ordinary writ jurisdiction. Writ petition being devoid of merit is dismissed.

8. The point of limitation is kept open to be agitated before the Trial Court.

[NITIN B. SURYAWANSHI, J.]