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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.6499 OF 2016

M/s Manikchand Babulal Rathor
A Partnership Firm through its Partner
Shri Jawaharlal s/o Satyapal Rathor,
Age-54 years, Occ – Business
R/o Opp Vidyut Bhawan,
Samarth Nagar, Nanded, District - Nanded

PETITIONER

VERSUS

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| <p>1. Syed Arifuddin s/o Syed Ziyauddin
Age – 64 years, Occ – Agril
R/o Dargah Sharif, Degloor,
Taluka – Degloor, District – Nanded</p> <p>2. Subhash Satyapal Rathod
Age – 51 years, Occ – Business
R/o Gurukrupa Nagar
Bhagwati Mangal Karyalaya
Nath Talkies Road, Parli Vaijanath
Taluka – Parli, District – Beed</p> <p>3. Narendra Satyapal Rathod
Age – 47 years, Occ – Business
R/o B. P. C. Petrol Pump
Near Railway Station,
At Post Parli Vaijnath
Taluka – Parli, District – Beed</p> <p>4. Vijaylaxmi Premnarayan Rathod
Age – 59 years, Occ – Household
R/o B-1/601, Brahama Majestic Apartment,
NIBM Road, Kondwa
Taluka and District – Pune 411 048</p> <p>5. Ugrasen Bhadrassen Rathod
Age – 64 years, Occ – Business
R/o Vidya Nagar, Parli Vaijnath
Taluka – Parli, District – Beed</p> | <p>RESPONDENTS</p> |
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6. Sunderdevi Premchand Rathod
(Died)
7. Sureshchandra Premchandra Rathod
Age – 69 years, Occ – Business
R/o Rathod Complex, Rathod Traders
Bhagyanagar Road, At Post – Nanded
Taluka and District – Nanded
8. Chaya Sanjay Rathod
Age – Major, Occ – Household and Business
R/o C/o Sanjay P. Rathod
7309 Morning Sunrise, C. V. Austin
Texas (USA)
9. Rabiya Begum Syed Amjad Ali
Age – 54 years, Occ – Household
10. Ahmadi Begum Siddi Akhlaq Husen
Age – 69 years, Occ – Household
Respondents No. 9 and 10 R/o Dargah Sharif
Degloor, Taluka – Degloor
District - Nanded

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Mr. V. D. Hon, Senior Advocate i/b Mr. U. B. Bilolikar, Advocate
for petitioner

Mr. R. S. Deshmukh, Senior Advocate i/b Mr. Devang Deshmukh,
Advocate for respondent No.1

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[CORAM : NITIN B. SURYAWANSHI, J.]

RESERVED ON : 11th SEPTEMBER, 2023
PRONOUNCED ON : 13th OCTOBER, 2023

ORDER :

1. This petition, filed under Article 227 of the Constitution of India, challenges order dated 25th April, 2016 passed by learned District Judge-1, Biloli below Exhibit-77 in Regular Civil Appeal No. 36 of 2013.

2. Respondent No.1/ original plaintiff filed Special Civil Suit No. 32 of 2007 for recovery of possession of land survey No. 60/2, New Gut No. 297, *admeasuring* 15 Guntha, situated at village Degloor, District – Nanded (supt plot), for recovery of damages and for perpetual injunction. The suit was decreed on 10th September, 2013 against defendant No.1, 1A, 1D, 1H. In the appeal, petitioner – appellant filed application Exhibit-77, under Order 6, Rule 17 of the Civil Procedure Code, for amendment of written statement, proposing amendment in respect of changing number of suit property. The application was opposed by respondents. Appellate Court, by the impugned order, has rejected the application. Hence, the present petition.

3. Heard learned senior advocate for the petitioner and learned senior advocate for respondent No.1. Perused the writ petition memo, its annexures, impugned order and the citations relied on by the learned senior advocates.

4. In the application Exhibit-77, petitioner – defendant No.1 has contended that during pendency of litigation between the parties, petitioner – defendant No.1 filed one suit for specific performance of contract, against plaintiff, to execute registered sale deed in respect of suit land survey No. 60/2 *admeasuring* 15

Guntha, situated at Degloor. Said suit came to be partly decreed against owner of land. In that suit, specific issue was framed that - "*Whether the suit plot is s. No.60/2 or 62/2, situated at Degloor?*" Perusal of the proposed amendment *prima facie*, shows that by way of amendment, defendant No.1 intends to change number of suit property and give detail history of the suit property, contending that original plaintiff/respondent No.1 has not given correct description of the suit land, at the time of filing of the suit.

5. Record further reveals that in the first suit i.e. Regular Civil Suit No. 171 of 1967, issue was framed "*Does defendant No.1 prove that survey number of land in question was mentioned as survey No.62/2 in the lease deed executed by him, by mistake?*". Trial Court has decided that issue in affirmative.

6. Record further indicates that it is the case of petitioner that at the time of filing appeal and providing information to advocate, in response to the queries made by advocate, tonch map, consolidated statement, certified copies of suit plot and other materials were collected, as per consolidated extract produced on record. Survey No. 60/2 is converted into Gut No. 296. Map is also on record and seven twelve extracts are produced in respect of Survey No.60/2. Seven twelve extracts

are prior to consolidation.

7. While rejecting the application, the Appellate Court has held that on perusal of judgment in Regular Civil Suit No. 171 of 1967 it appears that learned Trial Judge has considered change of numbers. First suit was filed in the year 1967. Judgment and decree passed in second suit i.e. Special Civil Suit No. 32 of 2007, which is passed on 10th September, 2013, is under challenge. Appeal is filed on 11th October, 2013 and appellant / petitioner has not taken any defence and / or a ground that there is change in survey numbers. Application for amendment is filed on 23rd February, 2016 i.e. approximately after 3 years from the date of filing of appeal. In view of observations in judgment in Regular Civil Suit No. 171 of 1967, that there is mistake in mentioning survey number, it is clear that this fact was within the knowledge of both the parties, however, petitioner till 2016 failed to take steps and the application is filed at belated stage and, therefore, the Appellate Court has rejected the amendment application.

8. From the aforesaid facts, it is clear that amendment is not likely to change nature of defence put up by petitioner / defendant No.1

9. In ***"Kamal Kumar Shivkishan Agrawal V/s Navnirman Developers and Others"*** MANU/MH/0853/2020, this Court, by relying on ***"Surendra Kumar Sharma V/s Makhan Singh"*** MANU/SC/1674/2009, held that dominant purpose of allowing the amendment is to minimize the litigation and if amendment is necessary for proper and effective adjudication of dispute between the parties and application for amendment is *bona fide* and if the amendment would not cause any prejudice to defendants and amendment is necessary to avoid multiplicity of litigation between the parties, the amendment should be allowed.

10. In ***"Life Insurance Corporation of India V/s Sanjeev Builders Private Limited and Others"*** MANU/SC/1093/2022, the Apex Court held thus -

"70 Our final conclusions maybe summed up thus :

(ii) All amendments are to be allowed which are necessary for determining the real question in controversy provided it does not cause injustice or prejudice to the other side. This is mandatory, as is apparent from the use of the word "shall", in the latter part of Order VI Rule 17 of the Code of Civil Procedure.

(iii) The prayer for amendment is to be allowed

(i) if the amendment is required for effective and proper adjudication of the controversy between the parties, and

(ii) to avoid multiplicity of proceedings, provided

- (a) the amendment does not result in injustice to the other side,*
 - (b) by the amendment, the parties seeking amendment does not seek to withdraw any clear admission made by the party which confers a right on the other side and*
 - (c) the amendment does not raise a time barred claim, resulting in divesting of the other side of a valuable accrued right (in certain situations)*
- (iv) A prayer for amendment is generally required to be allowed unless*
- (i) by the amendment, a time barred claim is sought to be introduced, in which case the fact that the claim would be time barred becomes a relevant factor for consideration,*
 - (ii) the amendment changes the nature of the suit,*
 - (iii) the prayer for amendment is malafide, or*
 - (iv) by the amendment, the other side loses a valid defence.*
- (v) In dealing with a prayer for amendment of pleadings, the court should avoid a hyper-technical approach, and is ordinarily required to be liberal especially where the opposite party can be compensated by costs.*
- (ix) Delay in applying for amendment alone is not a ground to disallow the prayer. Where the aspect of delay is arguable, the prayer for amendment could be allowed and the issue of limitation framed separately for decision.”*

11. Ultimately, the Apex Court did not disturb the order passed by the High Court allowing amendment application filed at the instance of plaintiffs.

12. In my view, petitioner's case falls within the above quoted

parameters.

13. Therefore, the amendment application deserves to be allowed, by keeping the point of limitation open. For belatedly filing of application, suitable cost can be imposed.

14. In the result, following order-

ORDER

- A. Writ Petition is allowed.
- B. Impugned order dated 25th April, 2016 passed by learned District Judge-1, Biloli below Exhibit-77 in Regular Civil Appeal No. 30 of 2013 is quashed and set aside.
- C. Application Exhibit-77 is allowed, subject to petitioner paying cost of Rs.50,000/- to respondent No.1 in the Appellate Court, within a period of four weeks from the date of receipt of writ of this order.
- D. Point of limitation is kept open, to be agitated before the Appellate Court.

[NITIN B. SURYAWANSHI]
JUDGE