

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 12261 OF 2023

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| 1. Dinkar s/o Vyanka Munde | |
| 2. Bapu s/o Vyanka Munde | |
| 3. Abhimanyu s/o Vyanka Munde | ...Petitioners |

Versus

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|--|----------------|
| 1. Uttam s/o Rajaram Munde
Died through his L.Rs. | |
| 1A. Lakhpatri w/o Uttam Munde | |
| 1B. Sunita w/o Madhukar Munde | |
| 1C. Baburao s/o Uttam Munde | |
| 2. Manohar s/o Rajaram Munde | |
| 3. Indrabai w/o Vishwanath Arsul
Died through her L.Rs. | |
| 3A. Rama s/o Vishwanath Munde | |
| 3B. Bhima s/o Vishwanath Munde | |
| 3C. Navnath s/o Vishwanath Munde | |
| 3D. Ajinath s/o Vishwanath Munde | |
| 3E. Subhash s/o Vishwanath Munde | |
| 4. Kamalbai w/o Vishwanath Munde | |
| 5. Rabalbai Bhanuda More (Mote) | ...Respondents |

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Advocate for Petitioners : Mr. V. S. Bedre h/f Mr. Kadam Annasaheb S.
Advocate for Respondent No. 1(a To C) And 2 : Mr. A.R. Tapse h/f
Mr. Suryawanshi Prashant D.

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CORAM : SHAILESH P. BRAHME, J.

DATE : 1st NOVEMBER 2023

PER COURT :

. Heard both the sides at the admission stage.

1. The petitioners are original defendants who suffered decree of partition and possession passed in RCS No.79/2009 instituted by the respondent no.1 & 2/plaintiffs. They have preferred Regular Civil Appeal No.14/2020 before the District Judge, Beed. An application at Exhibit-29 was filed under Order 6 Rule 17 seeking amendment to written statement. By order dated 01.08.2023, learned Judge deferred the hearing of application till final hearing of substantive appeal. Being aggrieved, the petitioners have filed this petition.

2. Respondent no.1 and 2 are the contesting parties. The learned Counsel for the respondent no.1 and 2 has brought to my notice that earlier also an application at Exhibit-25 was submitted before the Lower Appellate Court seeking amendment to written statement. It was rejected on 06.05.2022 by the Appellate Court. Being aggrieved, Writ Petition No.7766/2022 was filed. By order dated 13.03.2023, the petition was dismissed. A copy of order dated 13.03.2023 is placed on record. He would therefore submit that the petitioners have suppressed material facts and liable to be dismissed.

3. The learned Counsel for the petitioners submits that the amendment proposed vide application (Exhibit-25) is different than the amendment proposed vide Exhibit-29. The petitioners being defendants are entitled to take inconsistent stand. He further submits that the

Lower Appellate Court should not have postponed the decision on the application (Exhibit-29). This amounts to error of jurisdiction.

4. Per contra, learned Counsel for the respondent no.1 and 2 submits that the petitioners are in habit of making applications to protract hearing of the appeal. It is impermissible for the parties to seek amendment at the appellate stage when already petitioners/defendants had occasion before the trial Court to plead their case. He would submit that the application is being preferred with oblique motive. According to him, the writ petition is liable to be dismissed with cost. He has further urged that the contentions proposed to be raised by way of amendment are not necessary to decide the appeal.

5. I have considered the submissions of both the learned Counsels. The writ petition memo does not make mention of earlier application (Exhibit-25) and order passed thereon. It does not refer to the dismissal of the Writ Petition No.7766/2022. Besides that even successive application (Exhibit-29) before the Lower Appellate Court is also silent about the previous attempts of amendment. I am of the considered view, this amounts to suppression of material facts. Due to the suppression of material facts, this Court is not in a position to appreciate what was the nature of amendment which was proposed on earlier occasion. The learned Counsel for the respondent no.1 and 2 has rightly taken objection over the conduct of the petitioners.

6. The learned District Judge has not decided application (Exhibit-29) on its merits. The decision on the application (Exhibit-29) is only postponed and directed to be decided along with appeal. This course is not permissible. The learned District Judge ought to have promptly decided application under Order 6 Rule 17. The ends of justice would be met by directing the Lower Appellate Court to decide the application (Exhibit-29) within the stipulated period. The conduct of the petitioners needs to be taken into account while entertaining the application.

7. The impugned order is unsustainable. I, therefore pass the following order :

ORDER

(i) The impugned order dated 01.08.2023 passed below Exhibit-29 in Regular Civil Appeal No.14/2020 is quashed and set aside.

(ii) The learned District Judge, Beed shall decide the application at Exhibit-29 within a period of three weeks from today on its merits.

(iii) The petitioners shall pay cost of Rs.20,000/- to the respondents. Payment of cost shall be condition precedent for deciding application (Exhibit-29).

(iv) With this, the writ petition is disposed of.

[SHAILESH P. BRAHME, J.]