

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

WRIT PETITION NO.1681 OF 2022

**GOKULDAS S/O MADANLAL BHUTADA THROUGH GPA HOLDER
JAYPRAKASH GOKULDAS BHUTADA
VERSUS
SURYAKANT BHIMRAO PATIL**

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Advocate for Petitioner : Ms. A.S. Jadhav

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CORAM : NITIN B. SURYAWANSHI, J.

DATE : 09th MARCH, 2023

PER COURT :

1. By this petition filed under Article 227 of the Constitution of India, petitioner impugns order dated 06/02/2020, passed by learned Civil Judge Senior Division, Ahemadpur, below Exhibit-172 in R.C.S. No.08/2012.

2. In earlier round of litigation, order of appointment of Court Commissioner was challenged before this Court in Writ Petition No.245/2016. During pendency of said writ petition, there was no stay granted to the suit by this Court. On 10/11/2016, petitioner/plaintiff moved application Exhibit-119 seeking amendment on the basis of report submitted by the Court Commissioner, which was allowed by the trial Court by order dated 07/02/2017. Consequently, petitioner carried out the amendment and thereafter submitted his evidence affidavit vide Exhibit-157.

3. This Court by order dated 12/09/2017 allowed Writ Petition No.245/2016 and quashed and set aside the order of appointment of Court Commissioner observing thus:-

"14. Though a plea that the matter has been rendered infructuous is raised by the respondent-plaintiff by stating that the impugned order is already executed by carrying out amendment to the plaint, still in view of above observations, in my opinion, the clock can be set in right direction as the order impugned, though acted upon, is already held to be illegal and not permissible."

This order was unsuccessfully challenged before the Hon'ble Apex Court.

4. In view of the order passed by this Court in Writ Petition No.245/2016, respondent/defendant filed application Exhibit-172 praying that the pleadings of the plaintiff in amended plaint as per Exhibit-119 and the evidence given below Exhibit-157 be quashed and set aside.

After hearing the parties, trial Court partly allowed the application Exhibit-172 and set aside the amendment carried out by the plaintiff. However, prayer for setting aside the evidence is rejected. Hence, the present petition.

5. Herd learned advocate for petitioner. She strenuously urged that there is no provision in the Code of Civil Procedure to cancel the amendment already carried out by the party. Further submission is that, on the basis of amendment issues were framed

and evidence affidavit is filed by the plaintiff. Therefore, the impugned order is unsustainable.

6. I do not agree with the submission of learned advocate for petitioner in view of the observations made in paragraph No.14 (quoted supra). This Court has specifically observed "*the clock can be set in right direction as the order impugned, though acted upon, is already held to be illegal and not permissible*". The order passed by this Court is further confirmed by the Hon'ble Apex Court by dismissing the SLP challenging the said order.

7. In the facts of the present case, trial Court was justified in cancelling the amendment carried out by the plaintiff in view of the order passed by this Court. The impugned order is well reasoned order and no case is made out by the petitioner to interfere in the same by exercising extraordinary writ jurisdiction. Writ petition being devoid of merits is dismissed.

(NITIN B. SURYAWANSHI, J.)