

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.10860 OF 2022

Mahadeo Bhimrao Nalage And Others ...Petitioners

Versus

Santosh Kerba Bhoyate ...Respondent

Mr. D.P. Palodkar, Advocate for the petitioners.

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[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 3rd APRIL, 2023

ORDER :

1. The petitioners are aggrieved by the order passed by Civil Judge Senior Division, Shrigonda, Ahmednagar, below Exhibit-42 in Regular Civil Suit No. 31 of 2016.

2. Heard the learned advocate for the petitioners. Perused the grounds raised in the petition, annexures thereto and the impugned order.

3. Record indicates that the suit is filed by the plaintiff for specific performance of contract and perpetual injunction. The defendant claimed that he recently came to know about order passed by Sub Divisional Officer, Karjat in Revision Appeal

No. 13 of 2006, dated 29.06.2009, hence he sought permission to amend the written statement and bring the said fact on record.

4. Learned advocate for the petitioners strenuously urged that issues in the present matter were framed on 14.06.2017 and trial had already commenced and the matter was fixed for further cross examination of PW1 Mahadev Nalage, since 25.01.2019, hence, in view of proviso to Order VI Rule 17 of Code of Civil Procedure, application for amendment ought to have been rejected by the Trial Court.

5. The plaintiff has failed to make out a case of prejudice caused to him by the impugned order.

6. Indisputably, the decision of Sub Divisional Officer, which the defendant wanted to bring on record by way of amendment is subsequent development. No prejudice is likely to be caused to the plaintiff if said fact is brought on record by allowing the amendment.

7. The Trial Court has passed a reasoned order and by relying on *Sushil Kumar Jain Vs. Manoj Kumar*, AIR 2009 SC 2544, has rightly observed that, to avoid multiplicity of

proceeding amendment needs to be allowed. For the delay caused in applying for amendment, plaintiff is compensated by awarding cost of Rs. 1,000/-. No fault can be found with the discretion exercised by the Trial Court in favour of defendant, particularly in view of settled legal position that amendments should be liberally allowed. There is no illegality or perversity in the order impugned in the present petition. No case is made out by the petitioner to exercise extra ordinary writ jurisdiction. The writ petition being devoid of merit is dismissed.

[NITIN B. SURYAWANSHI, J.]