

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

27 WRIT PETITION NO.12537 OF 2022

SHIVSHANKAR UDAY GUNJAL SINCE MINOR THROUGH LRS
VIDHYULATA UDAY GUNJAL AND ANOTHER
VERSUS
JAYWANT HARJI GUNJAL PATIL AND OTHERS

Mr. D.S. Bagul, Advocate for the Petitioners.

CORAM : SHARMILA U. DESHMUKH, J.
DATED : JANUARY 23, 2023.

PER COURT :

1. Heard.
2. The petition challenges the order dated 1st October, 2022 passed in Special Civil Suit No.137 of 1994, whereby the Petitioners' application for amendment under Order 6 Rule 17 of the Code of Civil Procedure, 1908, for amendment of the plaint came to be rejected.
3. Learned counsel for the petitioners submits that the amendment is necessary, as by the amendment, Petitioners are seeking to prove the position that the plaintiff No.1, who was kidnapped in the year 1990, and alleged to have been murdered, and as such, taking into consideration the provisions of Section 108 of the Indian Evidence Act, the plaintiff no.1 is presumed to be

dead and this fact is necessary as the suit seeks to set aside the compromise decree in Special Civil Suit No.80 of 1992, which was entered into by excluding minor's share.

4. The impugned order affirms that the petitioner's evidence is over and subsequently this application for amendment has been preferred and as such, amounts to a post trial amendment. The proviso to Order VI Rule 17 of Code of Civil Procedure, pertaining to a post trial amendment mandates that the amendment, which were not within the Plaintiff's knowledge and which in spite of due diligence, could not be brought on record are permitted.

5. In the present case, the Petitioner is the mother of the minor child, who was kidnapped in the year 1990, and the present suit is filed by the Petitioner in the year 1994. Even if the presumption under Section 107 of the Indian Evidence Act is to be drawn the statutory period of seven years expired in the year 1997. As such, it cannot be said that the said fact was not within the knowledge of the Petitioner. The impugned order also notes that in the suit the Petitioner had taken out various applications for amendment. The application for amendment does not set out any reason as to why the application was not preferred earlier and is now being preferred after a lapse of 19 years. There is no explanation forthcoming to satisfy the requirement of proviso to Order VI Rule 17 of the Code of Civil Procedure.

6. For the reasons above, the writ petition is devoid of merits and stands dismissed.

(SHARMILA U. DESHMUKH, J.)