

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

WRIT PETITION NO.12922 OF 2022

**KHAN SIMRAN ALI HASAN ALI KHAN
VERSUS
THE STATE OF MAHARASHTRA THROUGH COLLECTOR AND
ANOTHER**

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Advocate for Petitioner : Mr. Shailendra S. Gangakhedkar
AGP for Respondent No.1 : Mr. P.N. Kutti
Advocate for Respondent No.2 : Mr. Ajinkya A. Joshi, Advocate
h/f Mr. S.V. Natu

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CORAM : NITIN B. SURYAWANSHI, J.

DATE : 18th JULY, 2023

PER COURT :

1. This petition filed under Article 227 of the Constitution of India, challenges the order dated 29/11/2022, passed by learned Joint Civil Judge, Senior Division, Aurangabad, below Exhibit-50 in Civil M. A. No.730/2017, thereby allowing application filed by respondent No.2 herein, under Order 6 Rule 17 read with Section 151 of the Code of Civil Procedure.

2. Respondent No.2 filed application for revocation of succession certificate issued in favour of the petitioner. In the said application, after petitioner's cross-examination was over, application Exhibit-50 is filed by respondent No.2 for amendment of the application Exhibit-1. The said amendment application is allowed. Hence, the present petition.

3. Heard learned advocate for petitioner, learned Assistant Government Pleader for respondent No.1 and learned advocate for respondent No.2.

4. Learned advocate for petitioner assailed the impugned order by relying on *Vidyabai and Others Vs. Padmalatha and Another*, [AIR 2009 SC 1433], *Pandit Malhari Mahale Vs. Monika Pandit Mahale and Others*, [(2020) 11 SCC 549] and *Writ Petition No.9987 of 2021 [Suresh Ramnarayan Mandore and Another Vs. Devidas Haribhai Ved]*. He submits that while allowing amendment the Trial Court has ignored the total lack of due diligence on the part of respondents, and also the fact that amendment was proposed after commencement of trial.

5. Per contra, learned advocate for respondent No.2 supported the impugned order by relying on *Deubai Tukaram Pakhare and Others Vs. Muktabai Tukaram Pakhare and Others*, [2000 (1) Mh.L.J. 511].

6. Perused the memo of writ petition, annexures thereto, the impugned order, affidavit-in-reply filed by respondent No.2 and citations relied upon by the respective parties.

7. Application Exhibit-50 for amendment is filed on the ground that information leading amendment was not with

respondent No.2 at the time of filing of application for revocation of succession certificate. Recently, in the month of July 2022, respondent No.2 discovered certain facts in respect of family background of the petitioner and therefore, amendment application was required to be filed.

8. It appears from record that, since beginning it is the contention of respondent No.2 that petitioner is not a biological daughter of late Hasanali Khan. Respondent No.2 had filed criminal complaint against petitioner for offence of cheating and forgery. Since respondent No.2 has recently received the information about family background of petitioner, the amendment is necessary to effectively decide controversy between the parties. The amendment does not change nature of the proceedings, though it is filed belatedly. For lack of due diligence the Trial Court has awarded cost of Rs.1,000/-. Considering the reasons assigned by the Trial Court no error is found in the approach of Trial Court in allowing the amendment application. The impugned order is in consonance with the settled legal position that amendments are to be liberally allowed, which enables the Court to effectively adjudicate the dispute between the parties.

9. In *Pandit Malhari Mahale* (supra) and *Vidyabai and Others* (supra), it is held that amendment should not be allowed

after commencement of trial. There cannot be any dispute about the said proposition. However, in the facts of the present case, since this is a matter in respect of succession certificate, with a view to give fair opportunity to the parties, amendment needs to be allowed so as to decide the lis between the parties.

10. In *Writ Petition No.9987/2021*, this Court upheld the order of trial Court, by which amendment sought by the defendants in written statement was rejected. The impugned order in that petition is not interfered with by this Court, as by way of amendment the party therein sought to withdraw the admission given by them in the written statement. This decision can be distinguished on facts.

11. In *Deubai Tukaram Pakhare* (supra), learned Single Judge of this Court has held that Court dealing with the Indian Succession Act is Court of civil jurisdiction and application filed before such Court under Order 6 Rule 17 for amendment of objection is tenable.

12. For the aforesaid reasons, no fault can be found with the order passed by the Trial Court. There is no illegality or perversity in the order impugned in present petition. Writ petition being devoid of merit is dismissed. No costs.

(NITIN B. SURYAWANSHI, J.)