

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
WRIT PETITION NO.2321 OF 2023**

JAINUDDIN MAHETAB JAMADAR AND OTHERS
VERSUS
MAHEBOOBI RASUL SHAIKH AND OTHERS

...

Dr. R. R. Deshpande h/f Ms. P. R. Deshpande, Advocate for the
Petitioners.

Mr. R. B. Bagul, AGP for Respondents-State.

Mr. P. P. Mandlik, Advocate for Respondent No.1.

...

**CORAM : SHARMILA U. DESHMUKH, J.
DATED : 27th FEBRUARY, 2023.**

PER COURT:-

1. Leave to amend to delete respondent nos.2 to 4, who are formal parties from the array of the respondents.

2. The petition takes exception to the order dated 15.11.2022 passed below Exhibit-79 in RCS No.9/2017 allowing respondent no.1/plaintiff's application for amendment of the plaint at the stage of final argument.

3. RCS No.9/2017 was instituted by the plaintiff seeking her share in the compensation in respect of the suit property, which was acquired by the Government being Gut Nos.97/3 and 112 and for partition and separate possession of the other suit property being Gut No.12/2.

4. The application came to be resisted by the petitioners as the same was made at the time of final argument and amounted to a post trial amendment.

5. Heard learned counsel appearing for the parties.

6. Learned counsel appearing for the petitioners has invited the attention of this Court to the position that RCS No.9/2017 was fixed for final argument on 17.08.2022 and thereafter, applications for adjournment was sought by respondent no.1 on one ground or the other. On 30.09.2022 an application for amendment came to be filed. The proposed amendment sought to quantify the amount of compensation at Rs.17,68,422/- being the share of respondent no.1 and sought to amend the prayer clause to include the quantified amount. Learned counsel for the petitioners submits that there was no amount specified in the prayer Clause and the subsequent amendment will change the nature of the suit. He would further submit that there were previous litigations in which the Acquiring Body had preferred an Appeal before this Court in which respondent no.1 had sought to be impleaded and as respondent no.1 had already instituted a separate suit for partition, by order dated 11.10.2017 respondent no.1 was held not to be necessary and proper party. This matter was carried forward to the Apex Court and was disposed of.

7. Per contra, learned counsel appearing for the respondents submits that the factual background is already laid down in the plaint. He would further submit that in paragraph no.10 of the plaint considering the award of Rs.45,25,000/-, the petitioner had quantified her share at Rs.3,23,214/-, however, the said amount did not take into consideration the amount of interest and solatium and as such, by the proposed amendment sought to re-quantify the amount by including the amount of

interest and solatium. He would further submit that there will be no evidence which will be led by the parties and as such, there is no question of reopening the issue.

8. Considered the rival submissions of the parties.

9. It is not in dispute that the proposed amendment is post a trial amendment and as such, attracts provisions of Order VI Rule 17 of the Code of Civil Procedure, which reads as under:

“17. The Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real question in controversy between the parties. Where, however an application for amendment, is made by the plaintiff in a suit in which the defendant has not appeared, though served with a summons, and where in the opinion of the Court the amendment applied for is material one, the Court shall give notice of the application to the defendant before allowing the amendment; and where in the absence of the defendant the Court grants any amendment in a form materially different from that of which notice has been given to the defendant, a copy of the amended plaint shall be served on the defendant.

Provided that no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the Commencement of trial.

10. Proviso to Order VI Rule 17 which deals with the post trial amendment provides that no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before commencement of the trial. In the present case RCS No.9/2017 was instituted by the petitioner seeking her share in the compensation deposited by the

Acquiring Body. In the First Appeal proceedings before this Court an application for impleadment was sought by respondent no.1, which was filed in the year 2017. As such, it cannot be said that quantification, which is being sought by the proposed amendment was not within the knowledge of the petitioner at the time of the institution of the suit or could not in spite of exercise of due diligence be raised before the trial had commenced. In the application for amendment there is no case made out to satisfy requirements of Order VI Rule 17 of the Code of Civil Procedure. The submission in the application for amendment is that the petitioner being an illiterate person could not obtain information about the legal proceedings and as such, the enhanced amount by way of interest and solatium was not within the knowledge of the petitioner and could not be raised earlier. This submission in my opinion is liable to be rejected in as much as it is clear from the order of this Court dated 11.10.2017 passed in Civil Application No.12564/2017 in First Appeal No.885/2016 that respondent no.1 had full knowledge of the proceedings and the deposit of amount by the Acquiring Body and also the amount of award. In the facts of this case it cannot be said that respondent no.1 was unaware of the amount which forms part of the award.

11. It is also needs to be noted that by the prayer Clause (A) in RCS No.9/2017 the petitioner is seeking her share in the amount of compensation, which will include the amount of interest and solatium, if found due to her and cannot be confined only to the award of Rs.45,25,000/-. The submission of the learned counsel for the petitioners that no evidence will be required to be led appears to be fallacious for the reason, if the respondent no.1 claims her entitlement to a quantified amount,

the burden is upon respondent no.1 to prove her entitlement. There is also further probability that in event proposed amendment is allowed, the petitioner would dispute the amount and as such, would require further evidence to be led by both the parties. At the stage of post trial amendment the question which is required to be considered is whether in spite of due diligence the parties could not have raised the matter before the commencement of the trial. The object and purpose of the proviso is to ensure that there is no protraction of the proceedings and parties seeking amendment has to be diligent.

12. In light of the above, the proposed amendment sought at the fag end of the trial cannot be permitted as it does not meet with the requirements of proviso of Order VI Rule 17 of the Code of Civil Procedure. As a result, the Petition succeeds. The impugned order dated 15.11.2022 is hereby quashed and set aside.

(SHARMILA U. DESHMUKH)
JUDGE