

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

WRIT PETITION NO.1368 OF 2020

**KAMARAO BAPURAO KADAM AND ANOTHER
VERSUS
GANGADHAR PUNJAJI KADAM AND OTHERS**

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Advocate for Petitioners : Mr. R.R. Shaikh

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CORAM : NITIN B. SURYAWANSHI, J.

DATE : 07th AUGUST, 2023

PER COURT :

1. Petitioners are aggrieved by the order dated 14/12/2018, passed by learned Joint Civil Judge, Junior Division, Hadgaon, Dist. Nanded, below Exhibit-87 in Regular Civil Suit No.136/2015, thereby rejecting the application filed by petitioners/ plaintiffs for issuance of summons to the added defendants.

2. Petitioners/plaintiffs filed the suit for measurement of suit property and possession of encroached portion. By order dated 23/03/2018 passed below Exhibit-74, plaintiffs were permitted to implead proposed defendant Nos.7 and 8 in the array of defendants. The amendment was directed to be carried out within a period of 14 days and suit summons were issued to the newly added defendants. Plaintiffs were also directed to file copy of amended plaint and make necessary compliance, failing which, consequences as per Order IX Rule 2 were to follow.

3. Plaintiffs filed application Exhibit-82 contending that advocate for plaintiffs has carried out necessary amendment. But due to some unavoidable circumstances, plaintiffs are unable to appear and they could not file amended plaint. Hence, extension of short time was prayed for filing amended plaint. The said application was allowed on 05/04/2018. Plaintiffs claim that they filed amended plaint on 13/04/2018. However, they failed to supply copies for service of summons on the added defendant Nos.7 and 8.

4. By filing application Exhibit-83, plaintiffs prayed for amendment of the suit, which came to be rejected by the Trial Court. Petitioners thereafter, filed application Exhibit-87 seeking issuance of summons against added defendant Nos.7 and 8. The said application is rejected by the Trial Court, holding that in terms of Order IX Rule 2, the suit is technically dismissed as against defendant Nos.7 and 8, since petitioners failed to provide copies of amended plaint for service on defendant Nos.7 and 8, and though Trial Court has power to grant extension as per Section 148, the said extension cannot be granted for more than one month. Hence, the present petition.

5. Heard learned advocate for petitioners. Though served, none appears for respondents. Perused the writ petition memo, annexures thereto, the impugned order and citation relied on by the

learned advocate for petitioners.

6. Approach of the Trial Court while rejecting application filed by the petitioners is hyper technical. In ***Salem Advocate Bar Association, T.N. Vs. Union of India, (2005) 6 SCC 344***, the Apex Court has held that upper time limit of 30 days provided under Section 148 of the Code of Civil Procedure is directory and extension beyond 30 days is permissible if sufficient cause exists or if the act could not be performed within 30 days for the reasons beyond control of the party.

7. In the present case, petitioners have failed to give copies of amended plaint for service of summons on the added defendant Nos.7 and 8, within stipulated time. That by itself cannot be a ground for the Trial Court to reject the application filed by petitioners to issue summons to the added defendants. Reasonable and fair opportunity needs to be given to the petitioners to contest the suit on merit. Since the impugned order denies the same, it cannot be sustained.

8. In the result, Hence, the following order:

ORDER

(I) Writ petition is allowed.

(II) Impugned order dated 14/12/2018, passed by learned Joint

Civil Judge, Junior Division, Hadgaon, Dist. Nanded, below Exhibit-87 in Regular Civil Suit No.136/2015, is quashed and set aside. Application Exhibit-87 is allowed.

(III) Petitioners shall pay cost of Rs.10,000/- to the defendants, in the Trial Court.

(NITIN B. SURYAWANSHI, J.)