

VRJ

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.1871 OF 2018

Kabir Abbas Jamadar & Anr. ... Petitioners

V/s.

Sayyad Abbas Jamadar & Ors. ... Respondents

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Mr. Vikas M. Mali for the petitioners.

CORAM : AMIT BORKAR, J.

DATED : SEPTEMBER 26, 2023

P.C.:

1. The petitioners are challenging order dated 6th November 2017 rejecting application for amendment of written statements mainly on the ground that the amendment withdraws admission given by the defendants.
2. It appears that the respondents filed suit for partition and separate possession. The defendants filed a written statement contesting the claim of the plaintiffs.
3. On 17th January 2017, the petitioner No.1 who is original defendant No.2 before the Trial Court filed an application for amendment of written statements to incorporate legal pleas.
4. The Trial Court rejected the application. This Court while issuing notice on 4th April 2018 recorded a statement of the advocate for the plaintiffs that the petitioner No.1 is not pressing

inconsistent plea and, therefore, is omitting paragraph No.7 of amendment application.

5. Office remark dated 27th August 2018 indicates that respondent Nos.1 to 7 are duly served. Despite service, respondents have failed to appear either personally or through advocate. On 1st August 2023, the advocate for the respondents made a statement that she has returned papers to the respondents. On 28th August 2023, this Court noted absence of respondent No.1. However, in order to grant last opportunity to respondent No.1, adjourned the matter to 4th September 2023. It was made clear that on the said date respondent No.1 fails to appear the petition will be decided on merits. Thereafter, on 4th September 2023, none appears for the respondents. Today also none appears for the respondents.

6. On consideration of the impugned order, it appears that the Trial Court rejected the application for amendment on the ground that the petitioners have failed to prove due diligence and the amendment withdraws admission given in favour of the plaintiffs. On the point of due diligence, in my opinion, the explanation tendered in paragraph No.1 of the application for amendment can be treated as due diligence under Proviso II Order 6 Rule 17. Since the petitioners have restricted amendment of written statements to legal pleas, the application below Exhibit-80 except paragraph No.7 of the amendment application deserves to be allowed. Hence, following order:

a) The impugned order dated 6th November 2017 passed

by the Civil Judge, Junior Division, Palus in Regular Civil Suit No.13 of 2013 is quashed and set aside.

b) The application below Exhibit-80 is partly allowed. Except proposed amendment in paragraph No.7 of the amendment application, rest of the amendment is allowed.

7. The writ petition stands disposed of. No costs.

(AMIT BORKAR, J.)