

Pallavi

PALLAVI
MAHENDRA
WARGAONKAR

Digitally signed by
PALLAVI MAHENDRA
WARGAONKAR
Date: 2023.02.03
18:08:20 +0530

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

WRIT PETITION NO.1447 OF 2023

Radha Balkrishnalal Pittie and Ors.

...Petitioners

Versus

Shri. Niraj Shailesh Gandhi and Ors.

...Respondents

Mr. B.N. Shukla a/w Mr. Deepak Shukla i/b. M/s. B.N. Shukla & Co., for
the Petitioners.

Ms. Pooja Thakkar for the Respondents.

CORAM : MADHAV J. JAMDAR, J.

DATE : 3rd FEBRUARY 2023

P.C. :

1. Heard the learned Advocate appearing for the Petitioners and the learned counsel appearing for the Respondents.
2. The impugned order in the present Writ Petition filed under Article 227 of the Constitution of India is order dated 14th November 2022 passed by the learned Judge, Small Causes Court, Mumbai below Exh.102 in R.A.E. Suit No.292/655 of 1993. By the impugned order, the said Exh.102 application filed seeking amendment of the plaint has been allowed. The learned Trial Court while allowing the

Pallavi

amendment application has observed that the facts sought to be brought on record by way of amendment are the subsequent events.

3. The learned counsel appearing for the Petitioners submitted that this is eighth amendment and the last amendment has been carried out in 2009. He submitted that the suit is of the year 1993 and the plaintiffs are amending the plaint from time to time and therefore, delaying the hearing of the suit. He submitted that the amendment application is malafidely filed. He also submitted that the contents of amendment are not genuine and false case is sought to be introduced.

4. On the other hand, it is the submission of the learned counsel appearing for the Respondents i.e. the original plaintiffs that the family of plaintiffs is very large. In the amended plaint, which has been amended prior to 2009, it has been mentioned that there are 21 members in the family. She submitted that by the present amendment, what is sought to be brought on record are the subsequent events which have taken place after 2009. She submitted that as there is increase in family members due to birth and marriages, there is need of separate premises.

Pallavi

5. Perusal of the schedule annexed to the amendment application shows that the factual position which is sought to be brought on record are the subsequent events. The present suit is filed in the year 1995 and therefore, rigors of proviso to Order VI Rule 17 of the Code of Civil Procedure, 1908 are not applicable to the present case. In any case, it is admitted position that although the issues are framed and re-framed or additional issues are framed from time to time, the evidence affidavit is not yet filed and therefore, the trial has not begun.

6. Perusal of the proposed amendment shows that what is sought to be brought on record are the subsequent events. It is settled legal position that at the stage of consideration of the amendment application, the merits of the amendment are not required to be considered. Therefore, there is no substance in the contentions raised by the Petitioners. Therefore, the Writ Petition is dismissed, however, with no order as to costs.

[MADHAV J. JAMDAR, J.]