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

WRIT PETITION NO.811 OF 2023

Soukhyasheel Indrasen Sathe

... Petitioner

V/s.

Narendra Indrasen Sathe (Deceased)

Through Legal Heirs & Ors.

... Respondents

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Mr. Pradeep J. Thorat a/w Mr. Aniesh Jadhav a/w Ms.
Aditi S Naikare, for petitioner.

Mr. V. V. Tapkir a/w Mr. Vijay D. Tapkir, for respondent
No.2.

CORAM : AMIT BORKAR, J.

DATED : SEPTEMBER 25, 2023

P.C.:

1. By this writ petition under Article 227 of the Constitution of India, the petitioner/defendant No.2 is challenging order passed by the Trial Court rejecting application for amendment of written statement.
2. It appears that respondent No.1 had filed suit for partition and separate possession of suit properties. Defendant No.1 has contested the suit by filing the written statement.
3. The petitioner/defendant No.2 is supporting the plaintiff.
4. The hearing of the suit has been started, but the cross-examination of the plaintiff is yet to be started on that stage.

Petitioner/defendant No.2 has been filed an application for amendment of written statement. By way of proposed amendment, the defendant No.1 intends to bring on record a fact that partition between father of the parties to the suit i.e. Yashwantrao Dabhade and his adoptive father Malharrao Dabhade had taken place.

5. According to petitioner, it is only when he got knowledge of the said fact in the year 2022 and he obtained certified copy of the mutation entry, he applied for application for amendment.

6. The Trial Court by the impugned order rejected the application.

7. The Trial Court rejected the application based on two reasons; (i) absence of due diligence, (ii) proposed amendment is not necessary to real controversy between the parties.

8. Considering the stage of the suit i.e. the cross-examination of the plaintiff is yet to be started, it was necessary for the Trial Court to consider the explanation of due diligence pleaded by the petitioner in paragraph 4 of the application for amendment.

9. According to him, he got knowledge about previous partition taken place between father of the parties only when he got certified copy of mutation entry. He stated that despite due diligence, he could not obtain the information mentioned in the proposed amendment.

10. Considering the fact that the cross-examination of the plaintiff is yet to be started and the explanation referred in paragraph 4 of the application, it prima facie appears that the

petitioner's due diligence as required proviso under Order 6, Rule 17 of the Code of Civil Procedure, 1908.

11. In so far as the point of necessity to amendment to decide real controversy is concerned. By way of proposed amendment, the petitioner intends to bring on record alleged previous partition between father of the parties.

12. On perusal of the paragraphs referred in application for amendment, it appears that such averments cannot be termed as a case is *unnecessary* for deciding real controversy between the parties. Once, the factum of due diligence is satisfied, the Court should be liberal in allowing the application for amendment of written statement only accrued in favour of parties and such party cannot be placed on such federalist; therefore, in my opinion, the application being for amendment of written statement, it ought to have allowed. Hence, following order is passed:

a) The order dated 19 October 2022 passed by the 3rd Addl. Small Causes Court, Pune below Exhibit 106 in Special Civil Suit No.346 of 2010 is quashed and set aside.

b) The application below Exhibit 106 in Special Civil Suit No.346 of 2010 is allowed.

13. The writ petition stands disposed.

(AMIT BORKAR, J.)

Note: This order is corrected as per order dated 29 September 2023. Correction in line 3 of paragraph 12 shown in italicize.