

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR**

Writ Petition No. 3375 of 2018

PETITIONERS :

1. Sou. Jamunabai Ramdeo Sikchi, aged 70 years, occupation agriculture.
2. Ramdeo Kisangopal Sikchi, aged 83 years, resident of Krushnachhaya, Camp Road, Near IMA Hall, Amravati.

-Versus-

RESPONDENTS :

1. Damodar Pundlikrao Pachpor, Through LR, Vijay Damodar Pachpor, age 45 years, Occu. Agricultural labour.
2. Manohar Pundlikrao Pachpor, aged 56 years, occupation agriculturist,
3. Sou. Vanitabai Madhukar Pachpor, aged 46 years, occupation agriculturist,
4. Rajesh Manohar Pachpor, aged 36 years, occupation agriculturist,
5. Mangesh Manohar Pachpor, aged 32 years, occupation agriculturist,

All Nos.1 to 5 resident of Amla (Vishweshwar), Tahsil Chandur Railway, District Amravati.

6. Sou. Sumanbai Kashirao Sarode, aged 62 years, occupation household, resident of Mangla Devi, Tahsil Ner Parsopant, District Yavatmal.
7. Sou. Bebibai Sudhkarrao Dahale, aged 54 years, occupation household and agriculturist, resident of Ramanagar, Amravati, Tahsil Amravati.
8. Sou. Sindhubai Narayanrao Satpute, aged 58 years, occupation household, resident of Katol, Khoje Layout, Katol, District Amravati.
9. Sou. Sushilabai Dnyaneshwarrao Dhadage, aged 46 years, occupation household, resident of Tiwsa, Tahsil Tiwsa, District Amravati.

Mr. S.S.Deshpande, counsel for the petitioners.
Mr. S.S.Dhengale, counsel for the respondents.

CORAM : ANIL S. KILOR, J.
DATED : 06.01.2023.

Heard.

2. **Rule.** Rule made returnable forthwith. The petition is heard finally with the consent of the learned counsel for the parties.

3. By the present writ petition, a question is raised to the correctness and legality of order dated 07/03/2018 below Exhibit-66, passed by the Joint Civil Judge, Junior Division, Chandur Railway (Trial Court), rejecting the application filed by the petitioners under Order VI Rule 17 of the Code of Civil Procedure (CPC) for amendment of pleadings.

4. The petitioners are the defendants in the suit filed by the plaintiffs-respondents for permanent injunction in which the petitioners moved an application to file counter claim by amending the written statement.

5. The said application was filed on 11/12/2013, which was rejected vide order dated 08/09/2014 below Exhibit-57. Against the said order, the petitioners filed the Writ Petition No.5172 of 2014, which came to be dismissed on 06/12/2016.

6. Thus, on rejection of prayer of the petitioners/defendants to file counter claim, they filed another application Exhibit-66 for amendment under Order VI Rule 17 read with section 151 of CPC. The said application came to be rejected by the impugned order dated 07/03/2018, which is impugned in the present writ petition.

7. I have heard the learned counsel for the respective parties.
8. Shri Deshpande, learned counsel for the petitioners, submits that the application came to be dismissed on the ground that as the counter claim was rejected and similar facts, which were mentioned in the counter claim, the petitioners-defendants wanted to bring on record by way of amendment. It is submitted that by way of amendment, the defendants are not seeking any relief against the plaintiffs and, therefore, it cannot be said that the proposed amendment would cause any prejudice to the plaintiffs. It is pointed out that even it is not the case of the plaintiffs that the amendment will change the nature of the dispute. Therefore, he submits that the impugned order is erroneous.
9. The learned counsel for the plaintiffs-respondents opposes the present petition on the ground that the application was moved belatedly on 01/01/2017 and, therefore, according to him, it was rightly rejected by the Trial Court.
10. In the light of the rival submissions, I have perused the documents filed along with the petition and the impugned order.

11. In this case, the admitted facts are that the suit was filed by the plaintiffs for permanent injunction in the year 2009 and thereafter a written statement was filed by the petitioners-defendants in the same year. Thereafter, in view of the subsequent events occurred in the year 2012 and 2013, the application was moved for permission to file counter claim by amending the written statement with following prayers in the proposed counter claim.

“P R A Y E R :

In these circumstances, it is therefore humbly prayed that

- (a) It be declared that the sale certificate issued by Tahsildar in favour of the defendants and registered by Sub-Registrar, Chandur Railway in respect of the suit field in favour of the defendants be cancelled.*
- (b) The possession of the suit field be handed over to the plaintiff.*
- (c) Any other relief that the court deems fit, be granted, in the interest of justice.”*

12. The said application was rejected by the Trial Court on 08/09/2014 against which the writ petition was filed and the same

came to be dismissed on 06/12/2016 and immediately thereafter, on 01/01/2017 the application Exhibit-66 under Order VI Rule 17 read with section 151 of CPC was moved for amendment of pleadings in the written statement.

13. Hence, it can be seen that there is no delay in seeking amendment to the written statement after rejection of application to permit to file counter claim on the same pleadings as proposed to add by way of amendment.

14. As far as the proposed amendment is concerned, it relates to the subsequent events, which took place in the year 2012 and 2013 and therefore, it cannot be expected that the said facts ought to have been pleaded by the defendants in the written statement in the year 2009.

15. Furthermore, as the permission to file counter claim was refused, the petitioners left with no other option, but to amend the written statement to bring on record the subsequent facts.

16. In the circumstances, the findings recorded by the learned Trial Court that once the counter claim was rejected, wherein

similar facts were mentioned, the amendment to the written statement cannot be granted, is erroneous and is not sustainable in the eyes of law.

17. Thus, I am of the opinion that the present petition deserves to be allowed. Accordingly, I pass the following order.

ORDER

(1) The writ petition is allowed.

(2) The impugned order dated 07/03/2018, passed below Exhibit-66 in Regular Civil Suit No.23 of 2009 is hereby quashed and set aside and the application Exhibit-66 is allowed.

18. Rule is made absolute in the above terms. No order as to costs.

[ANIL S. KILOR, J.]