



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

WRIT PETITION NO. 4694 OF 2022

1. Shri Panchaleshwar Sanstha Reg.
No.A-463/Washim through Trsutees
- A] Shivbhajan Dhanraj Yadav,
Aged 53 years, Occ. Agriculturist
R/o Maharana Pratap Ward, Washim,
Tq. & Dist. Washim
- B] Sanjay Narayan Rangbhal
Aged about 48 years, Occ.
Agriculturist,
R/o Katiwesh, Washim, Tq. & Distt.
Washim
- C] Vilas Dhanraj Yadav,
Aged about 51 years, Occ. Agriculturist
R/o Maharana Pratap Ward, Washim,
Tq & Distt. Washim
- D] Suraj Ramdas Yadav,
Aged about 48 years, Occ. Agriculturist
R/o Ward No. 13, Washim, Tq. &
Distt. Washim
- E] Dinesh Babuwa Yadav,
Aged about 49 years, Occ. Agriculturist
R/o Chavanpura, Washim,
Tq. & Distt. Washim
- F] Sudhakar Pandurang Bankar,
Aged about 48 years, Occ.
Agriculturist,
R/o Maharana Pratap Ward, Washim
Tq. and Dist. Washim
- G] Shivanand Kishor Waghmare,
Aged about 51 years, Occ.

Agriculturist,
R/o Mahurwesh, Washim, Tq. & Distt.
Washim

...Petitioners

// VERSUS //

- 1] Shri Panchaleshwar Sanstha,
Reg. No.A-655/Akola, through
Assistant Charity Commissioner,
Washim, Tq. & Distt. Washim
- 2] The Deputy Collector & L.A.O. No.2,
Collector Office, Washim Tq. and Dist.
Washim
- 3] The Collector,
Washim, Dist. Washim
- 4] Mangesh Janardhan More,
Aged about 29 years, Occ. Agriculturist
- 5] Sanjay Vishwanath Vibhute,
Aged 39 years, Occ. Agriculturist,
Nos. 4 and 5 R/o Panchala, Tq. and
Distt.Washim

... Respondents

Shri R.N.Ghughe, Advocate for the petitioners.

Ms. Payal Bawankule, AGP for the respondent nos. 1 to 3

Shri A.R.Deshpande, Advocate for the respondent nos. 4 to 5.

CORAM : ANIL S. KILOR, J.
DATED : 2nd NOVEMBER, 2023.

ORAL JUDGMENT :

Rule. Rule made returnable forthwith. Heard finally by
consent of the respective parties.

2. In this writ petition, the challenge is raised to the Order Below Exhibit 48 dated 16th July, 2022 passed by the 3rd Joint Civil Judge, Senior Division, Washim in Regular Civil Suit No. 87 of 2014.

3. The learned trial Court while rejecting the application for amendment of Written Statement recorded the following reasons:

17. Reverting back to Heeralal's case cited supra, I would like to mention that the ratio laid down therein is squarely applicable to the present case. Therefore, in the light of the ratio laid down in Heeralal's case cited supra, present defendant Nos. 1A to 1G cannot be permitted to withdraw their admission appearing in their written statement Exh. 42 to the effect that 'one Bakaram Kasar was original owner/landlord of the suit land, and Manna Yadao was cultivating the suit land as a protected tenant'. Coming to the proposed amendment, more particularly described in para No.2 of an application Exh. 48 itself, I would like to mention that it is nothing but consequential amendment pertaining to withdrawal of said admission. Therefore, if proposed amendment is allowed, it amounts to grant of permission to defendant Nos. 1A to 1G for setting up their new case in their written statement. In other words, if the proposed amendment is allowed, nature of written statement Exh.42 will be changed."

4. Admittedly, the trial is not yet commenced and it is evident from the reasons recorded by the learned trial Court for rejection of amendment to the written statement that the learned trial Court has applied the principle which have to be taken into consideration while dealing with the application for amendment of the plaint. Thus, it is evident that on a wrong principle, the amendment to the written statement was denied.

5. Surprisingly, the learned trial Court while rejecting the application for amendment to the written statement has recorded the reasons that if the amendment is allowed, it would amount to grant of permission to the defendants to set up a new case and in that case it would change the nature of written statement.

6. In the circumstances, in view of the settled law that while considering the application for amendment to the written statement, the Court shall take lenient view and further considering the settled law that the defendant can take conflicting stand, the impugned order is illegal and not sustainable in the eyes of law, therefore, liable to be quashed and set aside. Accordingly, I pass the following order.

- i. The writ petition is allowed;
- ii. The order dated 16th July, 2022 passed by the 3rd Joint Civil Judge, Senior Division, Washim in Regular Civil Suit No. 87 of 2014 is hereby quashed and set aside and consequently the application Exhibit 48 is allowed except paragraph 23-C of the application (as recorded in the order of this Court dated 17th October, 2022).

[ANIL S. KILOR, J.]