

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

Writ Petition No. 8580 of 2022

Sayyed Ahsanali s/o Syed Zafar Ali and another

Vs.

Sayyed Yusuf s/o Syed Muzaffar and others

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Mr.A.S.Mehadia, counsel for the Petitioners.

CORAM : ANIL S. KILOR, J.

DATED : 09.01.2023.

Heard the learned counsel for the
petitioners.

2. The challenge raised in this writ petition is to the order below Exhibit-10 dated 18/11/2022, passed by learned District Judge-4, Akola in Regular Civil Appeal No.19 of 2019, denying permission to the petitioners to amend the suit.

3. The learned lower Appellate Court recorded his findings in para-6 of the impugned order, for rejection of the application. Para-6 reads thus:

“6] In the case in hand, not only has the trial begun but it concluded and the trial court even

decided the suit by dismissing it. The plaintiffs preferred the appeal under consideration in 2019 and after about two years of appeal, they came up with the application under consideration for amendment of pleadings. The reason given for seeking amendment at this stage *firstly*, is **to avoid technicalities** at the time of hearing and *secondly*, **due to oversight** (as mentioned on page-3 & page-5 of the application). It has been brought to the notice of this court by the respondents that in the year 2012 also, the plaintiffs had sought amendment before the trial court. That nothing prevented the plaintiffs from seeking the proposed amendments ten years ago, while seeking another amendments before the trial court. It is clear that the appellants (plaintiffs) intend to defeat the observations of the trial court in the impugned judgment, with the intended amendments. It is true that nothing would have prevented the appellants from seeking such amendments ten years ago. 'Oversight' and 'to avoid technicalities', can not be a cogent reason for seeking amendment at appellate stage. If the proposed amendments are allowed by showing undue and unwarranted leniency, it will not only lead to injustice to the other side but such approach would trigger several amendment applications even in the future. The only way this court can allow this amendment is by defying the law laid down by O-6 R-17 of CPC. There has been no due diligence on the part of the appellants. Time of all the stakeholders has been

consumed and wasted because of the meritless and unwarranted application. I am convinced that not only does the application deserve to be turned down but costs of Rs.1,000/- need to be awarded for the aforesaid reasons. Hence, the orders.”

4. From the above referred findings, it is evident that the application for amendment to the suit was filed at the stage of appeal, after decision of the suit and the only reason given in the application is that ‘due to oversight’ and ‘to avoid technicalities’, the application could not be moved.

5. As there is no error or perversity committed by the learned lower Appellate Court, I am not inclined to interfere with the impugned order. Accordingly, the writ petition is dismissed. No order as to costs.

[ANIL S. KILOR, J.]