



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

979 WRIT PETITION NO. 6383 OF 2022

Shaikh Bakhir Hussain Shaikh Amir
Through Its Attorney
Shaikh Dildar Shaikh Bakhir HussainPetitioner

VERSUS

Mobinkhan Taimurkhan Pathan & othersRespondents

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Mr. Y. K. Bobade, Advocate for the Petitioner.

CORAM : R. M. JOSHI, J.
DATE : 21st NOVEMBER, 2024.

PER COURT :

1. None for the Respondents. This indicates that Respondents are not inclined to oppose the Petition.

2. This Petition is filed by original Plaintiff in Regular Civil Suit No. 37/2020 wherein application Exhibit 25 came to be filed by him for amendment to the plaint under Order 6 Rule 17 read with Order 1 Rule 10 of the Code of Civil Procedure.

3. It is the case of the Petitioner that two persons namely Taimurkhan Fakirkhan Pathan and Pannalal Baldava are necessary

and proper party and accordingly, clause 6(a) is sought to be incorporated in the plaint.

3. Learned counsel for Petitioner submits that the Trial Court has committed error in rejecting the application on the ground that there is no evidence placed by the Plaintiff on record in support of the said contention. This observation of the Trial Court is contrary to the law as at the stage of allowing the amendment, it is not permitted to the Court to go into correctness thereof.

4. Admittedly, the original Defendants have filed written statement. No issues are framed till date. As such, the trial is not commenced in order to create embargo as contemplated under provisions of Order 6 Rule 17 of Code of Civil Procedure.

5. Prima facie perusal of the application Exhibit 25 indicates that the Plaintiff has specifically pleaded reasons for which addition of Taimurkhan Fakirkhan pathan and Pannalal Baldava is required. Though learned Trial Court has permitted amendment to the plaint, the request of joining these persons as party is rejected. Once amendment is allowed and there are allegations against these

persons, they become necessary party to the suit. Hence, the impugned order cannot sustain. As such, the Petition is allowed. Application Exhibit 25 is allowed. Amendment to be carried out by Plaintiff within a period of 14 days from today.

(R. M. JOSHI)
Judge

dyb