

HARSHADA H. SAWANT  
(P.A.)

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

**WRIT PETITION NO.16064 OF 2023**

Tulshiram Ankush Chandane & Ors.

.. Petitioners

**Versus**

Gangubai Baburao Kshirsagar (since deceased)

through legal heirs Janabai Arjun Shelke & Ors. .. Respondents

.....

- Mr. Mohan N. Dhamal a/w. Mr. Vishal Mohan Dhamal, Advocates for Petitioners.

**CORAM : MILIND N. JADHAV, J.**

**DATE : JANUARY 05, 2024**

**P.C.:**

- 1.** Heard Mr. Dhamal, learned Advocate for Petitioners.
- 2.** Writ Petition takes exception to order dated 12.06.2023 passed below Exhibit-54 by the learned Appellate Court in the appeal proceedings. With the able assistance of Mr. Dhamal, I have perused the impugned.
- 3.** The Application for seeking amendment to the written statement in the Suit which has been decreed is made for the first time in the Appeal Court on two specific grounds namely not having knowledge as also incompetence and lethargy of the Advocate concerned.
- 4.** While dealing with the aforementioned submission and grounds, the learned Trial Court in the facts of the present case itself has returned the following findings in paragraph Nos.9 and 11 of the

impugned order which read thus:-

*“9. No doubt, amendment in pleading is permissible if it is necessary to decide the real controversy between the parties and if it does not cause prejudice to the opposite party. Provided, once hearing of the case is commenced, amendment in the pleading is allowed only if the party seeking amendment shows due diligence. In this case, from the application itself, it is clear that defendant No.1 was having the knowledge of the facts when he filed the written statement in the first instance in the year 2012. He alleged that due to incompetency of his Advocate, he could not properly explain in the written statement his rights to the suit property.*

*10..*

*11. In this case, notice was not issued to the lawyer against whom allegations are made. Further, plaintiff No.1 has demolished the case of ignorance of court procedure of defendant No.1 by pointing out the names of the Advocates with whom defendant No. 1 has worked as a Clerk. Thus, defendant No.1 has failed to show that he has taken due diligence in seeking amendment in the written statement. Hence, the application is liable to be rejected.”*

**5.** From the above it is seen that learned Trial Court has undertaken a full fledged trial after framing issues and giving opportunity to both the sides and delivering the judgment by decreeing the suit of the Plaintiffs. As against the said decree, Defendant No.1 i.e. Petitioner has filed statutory appeal being Regular Civil Appeal No.11 of 19 before the Appellate Court. In that Appeal application seeking amendment to the written statement is filed on 10.01.2022. The pertinent date to be noted is the date of written statement which was filed by Petitioner / Defendant no.1 before the Trial Court which is almost 10 years prior to the date of filing the amendment application in the Appellate Court. This timeline is crucial and critical.

**6.** The application for amendment as filed by the Petitioner itself shows that Petitioner / Defendant No.1 was having knowledge of the facts pleaded therein when he had filed his written statement in the suit proceedings before the Trial Court in the year 2012. In that regard a proper, cogent and reasoned finding has been returned by the Court in paragraph Nos.9 and 11 of the impugned order dated 12.06.2023 passed below Exhibit-54.

**7.** In view of the above I am inclined to uphold and confirm the order dated 12.06.2023. Mr. Dhamal in his usual fairness would submit that the pending Regular Civil Appeal No.11 of 2019 as filed by the Petitioners before the learned Appellate Court be expedited by the Court. That request of Mr. Dhamal can be undoubtedly granted which will enure to the benefit and interest of both the parties to the proceedings.

**8.** In view of the above observations and findings order dated 12.06.2023 below Exhibit-54 is upheld and confirmed. Resultantly, the Writ Petition is dismissed. Learned Appellate Court is directed by this Court to preferably dispose of the pending Regular Civil Appeal No.11 of 2019 preferably within a period of four months from today.

**9.** With the above directions, Writ Petition is disposed.