



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

60 WRIT PETITION NO. 5451 OF 2023

DILIP RAJMAL KOKANI

VERSUS

KANTILAL TULSHIRAM SURYAWANSHI AND OTHERS

Mrs.Charuta S. Deshmukh, Advocate for the petitioner.

Mr.Ajinkya A.Joshi h/f. Mr.S.V.Natu, Advocate for respondent Nos.1 & 2.

Mr.K.B. Jadhav, AGP for the respondent-State.

CORAM : KISHORE C. SANT, J.

DATE : 18.03.2025

PC :-

01. Heard learned Advocates for both the sides. The order passed by the learned Jt. CJSD, Dhule dated 05.09.2022 on application below Exh.107 in RCS No.222 of 2013 is under challenge. The petitioner had filed an application seeking permission to insert some paragraphs in the affidavit in lieu of evidence. Said application was opposed by the respondents submitting that there is no such provision to amend the evidence. The learned Trial Court observed that additional evidence, however, can be given and that is permissible under exceptional circumstances. However, there is no provision to add, delete or change contents of affidavit. The application, therefore, came to be rejected. The learned Advocate for the petitioner invites attention of this Court to the order dated 13.06.2023 passed by this Court wherein this Court in view of judgment in the case of **K.K. Velusamy Vs. N. Palanisamy, reported in 2011 (11) SCC 275** granted liberty to the petitioner to file application seeking amendment to the plaint. It is submitted that now

application is filed seeking amendment to the pleading. It is thus submitted that the petition now can be disposed off with direction to the Trial Court to decide the amendment application on its own merits within stipulated period.

02. Learned Advocate for the respondents opposes the prayer. He submits that no illegality or perversity is pointed out in the order passed by the Trial Court and therefore no interference is required.

03. This Court finds some substance in the arguments of learned Advocate for the respondents. However, now that question is merely an academic question, in view of filing of amendment application, following order :-

ORDER

(i) The writ petition stands partly allowed with direction to the Trial Court to decide the application for amendment filed by the petitioner, within four weeks from today, on its own merits by hearing the parties. All points are kept open. This Court has not touched to the merits of the matter.

[KISHORE C. SANT, J.]