



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 12253 OF 2024

1. Pandurang s/o Limbaji Korde,
Deceased, Through: LRs.
- 1-1. Vishwas S/o Pandurang Korde,
Age: 51 years, Occu: Agri.
R/o Phule Pimpalgaon,
Tq. Majalgaon, District Beed
- 1-2. Prakash S/o Pandurang Korde
Age: 49 years, Occu: Agri,
R/o. As above.
- 1-3. Vilas S/o Pandurang Korde,
Age: 47 years,
Occu: Agri.,
R/o As above.
- 1-4. Pratibha Balasaheb Bhumbe,
Age: 46 years, Occu: Household.,
R/o Takarwan, Tq. Majalgaon,
District Beed.

.....PETITIONERS
(Orig. Defendants)

VERSUS

Sau. Kamalbai w/o Uddhav Rasve
Age: 56 yeas, Occu: Household,
R/o. Kitti-Aadaon. Tq. Majalgaon,
District Beed.

.....RESPONDENT
(Orig. Plaintiff)

Mr. B. S. Kudale, Advocate for the Petitioners
Mr. S. S. Solanke, Advocate for Respondent

CORAM : ROHIT W. JOSHI, J.

DATED : 14TH JULY, 2025

ORAL JUDGMENT :-

. The petitioner, who is original defendant in a suit for partition and separate possession, filed against him being Regular Civil Suit No.230 of 2018 had filed an application for amendment of written statement vide Exhibit 50 in the said suit. The said application came to be rejected by the learned Trial Court vide order dated 01.07.2024. The present petition is filed against the said order. Undisputedly, the suit is filed in the year 2018, and the trial has commenced after filing of affidavit of the plaintiff on 12.10.2021.

2. The petitioner/defendant has conducted cross-examination of the plaintiff on 01.07.2022 and the plaintiff, has thereafter, closed her evidence on 03.08.2022. Thereafter, the application for amendment came to be filed on 12.04.2024. It is sought to be contended in the written statement that the defendant/petitioner had borrowed amount of Rs.20,00,000/- approximately from Laxmi Urban Co-operative Bank Ltd., Latur, Majalgaon Branch for repairs

and renovation of Kanyadan Mangal Karyalaya, and that the said loan was repaid by the defendant/petitioner by obtaining financial help from some of his friends and relatives and a loan obtained from Hyderabad Bank.

3. As stated above, the application is filed after commencement of trial, the learned Trial Court has observed that the application is absolutely silent as to why the pleadings sought to be incorporated by way of amendment are not included in the written statement as filed initially as also, why application for amendment was not filed before commencement of trial.

4. Learned Counsel for the petitioners makes a submission that although, the application for amendment is filed after commencement of trial, the evidence of the petitioner/defendant is yet to commence and therefore, no prejudice will be caused to the respondent/plaintiff if the amendment is allowed in as much as the respondent/plaintiff will have opportunity of conducting cross examination of the petitioner/defendant with respect to pleadings sought to be incorporated in the written statement. The learned Advocate

has placed reliance on judgment of the Hon'ble Apex Court in the matter of *State of Bihar and Others Vs Modern Tent House and Another*, reported in *(2017) 8 SCC 567* in support of his contention.

5. Perusal of the judgment of the Hon'ble Apex Court will demonstrate that in the said matter, a defence which was already taken in the written statement was sought to be elaborated further by way of amendment. In that view of the matter, the Hon'ble Apex Court has held that even if, the amendment application was filed after commencement of trial, the application could be allowed in as much as the plaintiff could not be said to suffer any prejudice on account of the application being allowed.

6. In the present case, the pleadings which are sought to be incorporated by way of amendment are not in the nature of elaboration of defence taken earlier. A perusal of the written statement will demonstrate that the same is obviously silent with respect to contentions now sought to be raised. The defence of loan being obtained for repairs and renovation of the hall and repayment of the same is sought to be raised for

the first time by way of amendment. The amendment application is filed after commencement of trial. No explanation is offered to bring the case out of the clutches of Order VI Rule 17. In that view of the matter, the judgment of the Hon'ble Supreme Court relied upon by the petitioner does not take the case of the petitioner any further.

7. The learned Trial Court has rightly considered the factual matrix of the matter as also the legal position relating to Order VI, Rule 17 of the Code of Civil Procedure. The impugned order does not suffer from any error of law or jurisdiction.

8. No case for interference is made out. The Writ Petition is therefore **dismissed**.

9. Civil Application, if any, stands **disposed** of.

(ROHIT W. JOSHI, J.)