

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

936 WRIT PETITION NO. 10239 OF 2022

1. Padminibai Maroti Bandkhadke
Age : 74 years, Occu : Household,
R/o Nandgaon, Post : Mugaon,
Tq. Mukhed, Dist. : Nanded.
 2. Balaji Maroti Bandkhadker,
Age : 45 years, Occu : Agri,
R/o As above.
 3. Santosh Maroti Bandkhadke,
Age : 41 years, Occu. : Agri,
R/o As above
 4. Madhavrao Maroti Bandkhadke,
Age : 35 years, Occu. Agri,
R/o. As above,
 5. Ramchandra Maroti Bandkhadke,
Age : 28 years, Occu. : Agri,
R/o As above
 6. Murli s/o. Punda Bandkhadke,
Age : 24 years, Occu. : Agri,
R/o As above.
 7. Nandabai Shivaji Shrirame,
Age : 36 years, Occu : Agri & Household,
R/o. Salgara (BK), Tq. Mukhed,
Dist. Nanded
- ...Petitioners

VERSUS

1. Anusayabai w/o Malba Bandkhadke
Age : 63 years, Occu. : Agri & Household,
R/o. Nandgaon, Post : Mugaon,
Tq. Mukhed, Dist. : Nanded
2. Dhondyabai W/o Balaji Shrirame,
Age : 53 years, Occu : Agri & Household,
R/o. Kotgyal, Near Mukhed

Revenue Circle : Jamp, Tq. Mukhed,
Dist.: Nanded

3. Deubai W/o Parmeshwar Kokate,
Age : 43 years, Occu : Agri & Household,
R/o. Kotgyal, Near Mukhed Revenue
Circle : Jam, Tq. Mukhed,
Dist: Nanded

...Respondents

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Mr. S. R. Bagal h/f. Mr. Bharat N. Gadegaonkar, Advocate for the
Petitioner

Mr. M.D. Narwadkar, Advocate for Respondent No.1

Mr. P. B. Kulkarni h/f. Mr.D. B. Chavan, Advocate for Respondent
Nos.2 and 3.

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CORAM : ROHIT W. JOSHI, J.

DATED : 30th JULY 2025

ORAL JUDGMENT :-

1. The respondent no.1 had filed a suit being Regular Civil Suit No.09 of 2019 against respondent nos.2 and 3. The present petitioners had moved an application for impleadment of their names as defendants in the said suit by filing an application at 'Exhibit-9' which was allowed by the learned Trial Court vide order dated 26.03.2019. While allowing the application, the learned Trial Court directed the petitioners i.e. the proposed defendants to implead their names in the plaint by carrying out amendment within a period of 14 days. The amendment as directed vide order dated 26.03.2019 was not carried out as a consequence of which the learned Trial Court passed an order that right of the petitioners/proposed defendants to seek impleadment stood forfeited, in view of failure on their part to

carry out necessary amendment in the plaint.

2. The learned Advocate for the petitioners states that normally it is for the plaintiff to carry out amendment in the plaint when application for addition of parties is allowed. He states that the learned Trial Court directed the proposed defendants themselves to carry out amendment. His contention is that although, there is no legal infirmity in the said direction, normally the direction for carrying out amendment is issued to the plaintiff and therefore, the learned Advocate representing the petitioners/proposed defendants inadvertently failed to do the needful. His contention is that the petitioners should not be made suffer for any fault or inadvertent mistake on the part of their Advocate. He therefore contends that order dated 24.06.2019 passed by the learned Trial Court forfeiting the right to be impleaded needs to be quashed and set aside.

3. Mr M. D. Narwadkar, the learned Advocate for respondent no.1 (original plaintiff) and Mr.P. B. Kulkarni h/f. Mr.D. B. Chavan, learned Advocate for respondent nos.2 and 3 (original defendants) contend that there is an inordinate delay on the part of the petitioners (proposed defendants) in filing the petition. They contend that the petition should not be entertained having regard to the delay. They further contend that it was the duty of the petitioner to verify the

order and comply with the directions passed by the learned Trial Court.

4. Having heard the rival submissions as aforesaid, it is apparent that the learned Trial Court has applied its mind to the controversy involved in the matter and has allowed the application for addition of parties by passing a speaking order. The respondent no.1/plaintiff and respondent nos.2 and 3/defendants to the suit have accepted the order and they have chosen not to challenge the same. It is true that the petitioners (proposed defendants) ought to have noticed the directions and carried out amendment as directed by the learned Trial Court. However, it must be mentioned that the petitioners were represented by an Advocate and it appears that they were not made aware about direction to carry out amendment. Probably, the learned Advocate was also under impression that on the application being allowed, it was for the plaintiff to carry out the amendment.

5. As regards delay, it must be mentioned that after the order dated 24.06.2019 was passed respondent no.1/plaintiff and respondent nos.2 and 3/defendants who are related to each other entered into compromise before Lok Adalat and prayed for passing a compromise decree in terms of settlement. This prayer was rejected by the Lok Adalat and the suit was ordered to be disposed of without formal adjudication. The said order was passed on 13.07.2019. The

plaintiffs have challenged the said order by filing a petition before this Court being Writ Petition No.8196 of 2020 which is listed along with the present petition. In view of the fact that the suit was disposed of, and petition challenging the order disposing of the suit is also being decided today, the delay caused in filing of petition will not cause any prejudice to the respondents.

6. In view of the aforesaid, this Court is inclined to allow the petition. Hence the following order

O R D E R

- i. Writ Petition is allowed.
- ii. Order dated 24.06.2019 passed by the Learned Civil Judge, Junior Division, Naigaon Bz., Dist. Nanded below Exh. 0 in Regular Civil Suit No.09 of 2019 is quashed and set aside.
- iii. Learned Civil Judge Junior Division, is directed to take up the matter on board on 18.8.2025. On the said date, the petitioners i.e. proposed defendants shall carry out necessary amendment in the plaint in terms of order dated 26.03.2019 passed below 'Exhibit-9' in Regular Civil Suit No.09 of 2019.

[ROHIT W. JOSHI, J.]