

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIRCUIT BENCH AT KOLHAPUR
WRIT PETITION NO.19254 OF 2024**

Shri. Hemantkumar Bhikaji Kable/Dabholkar
Aged: 57 years, Occ.: Farmer,
residing at Dabhole Khurd,
Baudhwadi, Taluka-Sangmeshwar,
District-Ratnagiri, Maharashtra

..Petitioner
(Original Defendant No.1)

Versus

Shri. Shantaram Laxman Pawar,
Aged 62 years, Occupation: Farmer,
residing at Village Post Chorvane, Ravwadi,
Tal. Sangameshwar, District-Ratnagiri

..Respondent
(Original Plaintiff)

...

Mr. Dinesh S. Sonarlikar, Advocate for Petitioner.
Mr. Balwant Salunkhe h/f Mr. Shashank C. Mangle a/w Mr. Shravan H.
Sai, Advocate for Respondent.

...

**CORAM : S. G. CHAPALGAONKAR, J.
DATED : 15th DECEMBER, 2025.**

JUDGMENT:-

1. Rule. Rule made returnable forthwith. With consent of parties, matter is taken up for final hearing at admission stage.
2. The petitioner impugns order dated 14.08.2024 passed by Civil Judge Junior Division, Deorukh below Exhibit-78 in Regular Civil Suit No.26/2019, by which application filed by petitioner seeking amendment in written statement has been rejected.
3. The respondent/plaintiff filed Regular Civil Suit No.26/2019 contending that he had jointly purchased suit land under registered sale deed dated 16.07.2012 from Shri. Vijay Shankar Kamble. He alongwith defendant no.8 were in possession of suit property from date

of execution of sale deed. The plaintiff is in possession of his separate share specified in map as property (B). The defendant no.1 caused encroachment to the extent of 6R land out of ownership of plaintiff. The plaintiff came to know about aforesaid encroachment on 18.10.2012 when measurement was carried. Thereafter, plaintiff continuously persuaded defendants to hand over possession of encroached area. Hence, plaintiff claimed decree of possession against defendant nos.1 to 7.

4. The defendant no.1 filed written statement refuting claim of plaintiff. The Trial Court framed issues. The plaintiff filed his evidence affidavit on 12.10.2023. He was cross-examined on 24.04.2024. The plaintiff has further examined his witness. At this stage, defendant filed an application below Exhibit-78 seeking amendment in written statement. The defendant wants to bring on record certain additional facts, which according to him could not be brought on record due to inadvertence. The plaintiff opposed said application by filing his reply. The Trial Court after considering rival submissions, passed impugned order dated 14.08.2024 rejecting petitioner's application for amendment in written statement.

5. Mr. Dinesh Sonarlikar, learned Advocate appearing for petitioner submits that amendment can be brought at any stage of proceeding and same shall be liberally permitted for purpose of determining real controversy between parties. He would submit that when amendment

is sought in written statement, it needs to be liberally construed. In present case, petitioner intended to bring clarification to pleading in written statement. Such amendment could have permitted without demure. In support of his contentions he relies upon observations Supreme Court in following cases:

1. *Baldev Singh & Ors. Etc Vs. Manohar singh & Anr. Etc*¹.
2. *Rajkumar Gurawara (Dead) thr. Lrs Vs. M/s. S. K. Sarwagi & Co. Pvt. Ltd. & Anr.*²
3. *M/s. Revajeetu Builders & Developers Vs. M/s. Narayanaswamy & Sons & Ors.*³.
4. *Sushil Kumar Jain Vs. Manoj Kumar & Anr*⁴..
5. *B. K. Narayana Pillai Vs. Prarneswaran Pillai & Anr.*⁵.
6. *Salmona Villa Co-Op. Housing Society Vs. Smt. Mary Fernandes and Ors.*⁶.
7. *Sajjan Singh & Ors. Vs. Ram Kishan & Ors.*⁷.
8. *Pankaja & Anr. Vs. Yellappa (D) By Lrs. & Ors.*⁸.
9. *Abdul Rehman & Anr. Vs. Mohd. Ruldu & Ors.*⁹.

6. Per contra, Mr. Shashank Mangle, learned Advocate appearing for respondent supports impugned order.

1 2006 AIR SCW 3956.

2 AIR 2008 SC 2303.

3 (2009) 10 SCC 84.

4 (2009) 14 SCC 38.

5 (200) 1 SCC 712.

6 1997 (1) Mh.L.J. 6.

7 (2005) 13 SCC 89.

8 (2004) 6 SCC 415.

9 (2012) 11 SCC 341.

7. Having considered submissions advanced by learned Advocates appearing for respective parties, it can be observed that present suit is filed for removal of encroachment and recovery of possession. On 12.10.2023, respondent/plaintiff filed affidavit in lieu of examination-in-chief. On 24.04.2024, he has been cross-examined and further cross-examined on 08.05.2024. The plaintiff has filed evidence affidavit of other witnesses. The petitioner herein had filed written statement in October-2019. Thereafter, issues were framed and recording of evidence started.

8. The application seeking amendment in written statement is filed when trial reached advanced stage. Perusal of application Exhibit-78 would show that petitioner wants to insert paragraph nos.10(A) to 10(E) by way of amendment. The nature of amendment is similar to that of suggestions put by petitioner to plaintiff during course of cross-examination. The petitioner simply states that due to inadvertence, he could not bring pleading in original written statement. Practically, there is no explanation as to why petitioner could not bring such amendment from 2019 till 2024. Perusal of nature of amendment would suggest that it is not pertaining to any subsequent event or would not be necessary to decide question of controversy between parties. In view of Proviso to Rule 17 of Order VI of Code of Civil Procedure, in absence of explanation for delay in bringing amendment after commencement of trial, prayer seeking amendment at belated

stage cannot be entertained. The Trial Court has considered all relevant aspects and refused to permit amendment.

9. Although there cannot be dispute as to proposition of law in cited cases on behalf of petitioner, fact remains that petitioner has miserably failed to furnish explanation for delay in bringing amendment, particularly after commencement of trial. Even otherwise, this Court finds that proposed amendment is not significant to avoid multiplicity of litigation or finally decide *lis* between parties. In absence of explanation, amendment cannot be allowed ignoring bar contemplated under Proviso to Rule 17 of Order VI of Code of Civil Procedure. The Trial Court has rightly applied principles of law in facts of case. No jurisdictional error can be found in impugned order.

10. In result, Writ Petition stands dismissed.

11. Rule stands discharged.

(S. G. CHAPALGAONKAR)
JUDGE