

Arun Sankpal

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 4939 OF 2025**

Ibrahim Haji Abdul Mullani ..Petitioner
Versus
Khatunbi Abdul Mullani (Decd) & Ors ...Respondents

Mr. Rugved R. Kinkar, for the Petitioner.
Mr. Prasad Keluskar, for the Respondent.

CORAM: N. J. JAMADAR, J.
DATED : 21st APRIL 2025

P.C.:

- 1.** Heard the learned Counsel for the Petitioner.
- 2.** The challenge in this Petition is to an order dated 19th August 2024, passed by the learned Civil Judge, Senior Division, Kolhapur, whereby an Application preferred by the Petitioner-Defendant No.1 to amend the Written Statement post the commencement of the trial came to be rejected.
- 3.** Plaintiffs, who are the mother and siblings of the Defendant No.1, have instituted a Suit for recovery of a sum of Rs. 45,02,000/- which the Plaintiffs were made to discharge in view of loan obtained by Defendant No1, by creating security over the joint family property, without the consent and knowledge of the Plaintiffs. In addition, a Suit

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for general partition, being SCS No. 287 of 2001, is sub-judice between the parties.

4. After the commencement of trial, Defendant No.1 filed an Application seeking amendment in the Written Statement, to contend that there were other properties and the sources of income which the Plaintiffs had suppressed. During the Course of the cross-examination, certain admissions were elicited and, therefore, it was necessary to amend the Written Statement so as to incorporate those facts.

5. The learned Civil Judge was of the view that the proposed amendment was not necessary for the determination of the real question in controversy. The contentions sought to be raised by Defendant No.1 could be raised in the Suit for general partition, i.e., SCS No. 287 of 2001. Moreover, the Defendant No.1 was seeking an account from the Plaintiff No.4 of Rs. 58,92,000/-, which Plaintiff No. 4 had generated out of the joint family property/income, without filing a counter claim. Such an amendment cannot be permitted at the belated stage.

6. Mr. Kinkar, the learned Counsel for the Petitioner, submitted that the amendment was necessitated as the facts which were sought to be introduced by way of amendment in Written Statement came to light subsequent to the commencement of the trial. In such a situation, the Defendant No.1's application for amendment could not have been

rejected on the ground that the Defendant No.1 failed to satisfy the test of due diligence.

7. To lend support to aforesaid submission, Mr. Kinkar placed reliance on the judgment of the Supreme Court in the case of **Nitaben Dinesh Patel Vs Dinesh Dahyabhai Patel**,¹ wherein it was enunciated that if some facts have come to the knowledge subsequently and subsequent to the commencement of trial, may be during the course of trial, and it is found that it is necessary for the purpose of determination of real questions in controversy between the parties, on a fair reading of Order 6 Rule 17 CPC, such an application for amendment can be allowed even after the trial has commenced.

8. There can be no quarrel with the proposition of law. All amendments which are necessary for the determination of the real question in controversy are required to be allowed keeping in view the principle of potentiality of the prejudice and the bar of limitation for the relief sought to be introduced by way of amendment, wherever applicable. In the case at hand, as noted above, the Suit for general partition is sub judice. The instant Suit has been instituted to recover the amount which the Plaintiffs were made to pay on account of the creation of security interest by Defendant No.1 over the joint family property purportedly without the knowledge and consent of the Plaintiffs. The issues which are sought to be introduced by way of

¹ (2021) 20 SCC 210.

proposed amendment are not necessary for the determination of the question in controversy between the parties. The learned Civil Judge was fully justified in observing that those issues might warrant consideration in the Suit for partition.

9. Furthermore, the issues have been settled and the trial has commenced. The proposed amendment in the Written Statement is essentially in the nature of counter claim. Once the issues are settled, it is trite, the Defendant cannot be permitted to file a counter-claim.

10. The submission of Mr. Kinkar that Defendant No.1 could not carry out the amendment as the facts came to the knowledge of Defendant No.1 post the commencement of the trial, also does not deserve to be accepted unreservedly. It appears that the basis of the application for amendment in the extant Written Statement was the purported admissions elicited during the cross-examination. That would imply that the Defendant No.1 had knowledge about the facts, on the basis of which questions were put to the Plaintiff's witness and purported admissions were elicited. Therefore, the test of due diligence also cannot be said to have been satisfied.

11. Looked at from any perspective, the impugned order does not warrant interference in exercise of supervisory jurisdiction.

12. Petition stands dismissed.

[N. J. JAMADAR, J.]