



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

**WRIT PETITION NO.3389/2025**

**Viddyut Karmachari Sah. Grihanirman Sanstha Maryadit, Bhandara through its**  
**President Laxman Kisnaji Tichkule and others**

**...Versus...**

**Bhandara Industrial Cooperative Estate Limited, Bhandara, Through its**  
**President**

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Office Notes, Office Memoranda of Coram,  
appearances, Court's orders or directions  
and Registrar's orders  
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Court's or Judge's orders

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Mr. N.B. Kalwaghe, Advocate for petitioners  
Mr. S.P. Mokadam, Advocate for respondent  
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**CORAM : SACHIN S. DESHMUKH, J.**

**DATE : 03/09/2025**

1. The original plaintiffs have presented this petition raising an exception to the order rendered by the Joint Civil Judge Senior Division, Bhandara rejecting application filed under Order VI Rule 17 of the Code of Civil Procedure.
2. In a suit for declaration, mandatory and permanent injunction. In response to the suit summons, a written statement was presented by the defendants wherein a specific reference was made to decree in Regular Civil Suit No.84/1998 staking their claim on said decree.
3. The petitioners applied for the certified copy of judgment in Regular Civil Suit No.84/1998 and received the same. The present petitioners were not parties to the suit. As such, the decree is fraudulently obtained. Thus, the necessary amendment was sought to be incorporated by the application under Order VI Rule 17 of the Code of Civil Procedure.

4. While resisting the application for amendment, the respondent has presented their say stating that the plaintiffs were not diligent. That the trial had commenced and the evidence was led by filing of affidavit. Resultantly, trial Court has rejected the said application under Order VI Rule 17 of the Code of Civil Procedure on the ground that the evidence is already commenced, the proposed amendment was not necessary for adjudication of the suit and possibly might change the nature of the suit. Resultantly, the application came to be rejected. Aggrieved by the same, the petitioners have presented this petition under Article 226 of the Constitution of India.

5. It is the contention of the learned Counsel for the petitioners that the decree in Regular Civil Suit No.84/1998 is obtained by fraud as the litigating sides therein had consciously chosen to file the same without impleading the present petitioners as party respondents. It is submitted that although in the written statement, there was a specific reference by the defendants in relation to filing of the suit and decree therein. The fact remains that the proposed amendment would be necessary since the rights of the parties would be dependent upon the issues raised in the suit.

6. Moreover, the learned Counsel for the petitioners fairly concedes that there is a delay in filing the application. It is further submitted that the proposed amendment neither changes the nature of the suit nor would it cause any prejudice to the defendants and that the defendants can be adequately compensated by awarding compensatory costs to that effect. In support of contention the learned counsel for the petitioner

has placed heavy reliance on the judgment of Hon'ble Apex Court in case of *Dinesh Gopal Vs. Suman Agrawal, 2024 SCC Online SC 2615*.

7. Per contra, learned Counsel for the respondent has submitted that the petitioners were not diligent in seeking the amendment since the fact of decree of suit is specifically stated by the defendants in their written statement. Thereafter, the trial has commenced and it has reached to the stage of adducing the evidence. Therefore, at this juncture would cause serious prejudice to the respondent and amendment would alter the nature of the suit.

8. It is a matter of record that the defendants are staking their claim on the strength of decree rendered in Regular Civil Suit No.84/1998 to which admittedly the present petitioners are not parties. In any case the proposed amendment would be necessary for proper authentication of suit and the trial Court has not taken into account the essence of the proposed amendment for determination of the rights in a suit presented before it. Although, the petitioners are not diligent, however, as fairly submitted by the learned Counsel for the petitioners the respondent can be adequately compensated by imposing costs.

9. The reliance placed by the learned counsel in the case of *Dinesh* (supra) unequivocally holds that amendments shall be necessarily allowed, these are necessary and effective for adjudication of suit to avoid multiplicity of proceedings as such, amendment can be regarded as necessary for proper decision. It appears that trial Court has considered proposed amendment as time barred, which is not permissible.

10. It is a settled rule that the Courts should adopt a liberal approach in granting leave to amend at any stage of the proceedings, however, the same cannot be in contravention of the statutory boundaries. As said herein above the proposed amendment is for effective and proper adjudication of the controversy between the parties and it does not result in causing prejudice to the other side. In certain terms it cannot be said that by way of proposed amendment, there is an attempt by the petitioners to withdraw any clear admission. The amendment neither changes the nature of the suit nor it is with mala fide intent. Thus, the trial Court has ignored the aforesaid settled principle and in any case while considering the application for amendment it is not open for the trial Court to consider the merits of the proposed amendment. Thus, the trial Court has committed error while rendering the order under challenge. It deserves to be quashed and set aside.

11. The amendment application below Exh.92 in Regular Civil Suit No.05/2017 is allowed. The order rendered by the trial Court is quashed and set aside. However, considering the delay on the part of the petitioners, the respondent will have to be compensated with costs of Rs.10,000/- (Rupees Ten Thousand Only) which would sub serve the ends of justice. The costs to be deposited with the trial Court within a period of three weeks from today, failing which, the order under challenge shall stand revived. The writ petition is allowed in the aforesaid terms.

**(SACHIN S. DESHMUKH, J.)**