



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

WRIT PETITION NO. 4178 OF 2024

Bandu Mahadeo Kale, Aged about 70 years, Occ: Agriculture,
R/o Wanojadevi, Tah. Malegaon, Dist. Yavatmal.

PETITIONER

VERSUS

Chinmay Suhas Damle, Aged about 39 years, Occ: Service,
Through his Power of Attorney Suhas Purushottam Damle,
Aged about 69 yrs., Occ: Retired, R/o Tilak Nagar, Wani,
Tah. Wani, Dist. Yavatmal.

RESPONDENT

Shri A.S. Moon, counsel for the petitioner.
Shri K.B. Zinjarde, counsel for the respondent.

CORAM : PRAFULLA S. KHUBALKAR, J.

DATE : NOVEMBER 13, 2025

ORAL JUDGMENT

RULE. Rule is made returnable forthwith and heard finally with the consent of the learned counsel for the parties.

2. The petitioner's challenge is to the order dated 18.03.2024 passed by the trial Court rejecting the application for amendment of the written statement.

3. The petitioner is defendant in Regular Civil Suit no.34 of 2011 which is a suit for removal of encroachment and possession of land bearing Gat no.444. The petitioner has already filed his written statement and the suit has proceeded at the stage of evidence. After the evidence was started, the petitioner filed an application for amendment of written statement proposing to delete paragraphs 11 and 13. The application was strongly opposed by the plaintiff on several counts and by order dated 18.03.2024 it was rejected. Feeling aggrieved by this order, the petitioner has filed the instant petition.

4. Shri A.S. Moon learned counsel for the petitioner vehemently submitted that the written statement was earlier filed on behalf of the defendant by his lawyer without seeking proper instructions and the admissions about ownership of the plaintiff over Gat no.444 i.e. suit property were wrongly mentioned in the written statement. He submitted that because of the mistake committed by his lawyer, the true factual position with respect to ownership of the suit property could not be brought on record. He submitted that the amendment to delete paragraphs 11 and 13 from the written statement is necessary for complete adjudication of the controversy involved in the suit and therefore the amendment ought to have been allowed. He also submitted that the issue about ownership of Gat no.444 is *sub-judice* in a proceedings before the Maharashtra Revenue Tribunal and the trial Court has failed to consider this vital aspect while rejecting the amendment application.

5. Per Contra, Shri K.B. Zinjarde, learned counsel for the respondent vehemently opposed the petition and submitted that the amendment seeking to withdraw the admissions deserved to be rejected. He submitted that the amendment if allowed at the stage of evidence would cause serious prejudice to the rights of plaintiff and by relying upon the position of law, he submitted that the trial Court has rightly rejected the amendment application.

6. While considering the rival contentions, it has to be noted that undisputedly the application for amendment was filed after the evidence of the plaintiff was closed. The record reveals that earlier the defendant had applied for amendment of his written statement *vide* Exhibit 42 which was allowed and the said order was subjected to challenge *vide* Writ Petition no.4226 of 2018. During pendency of the said petition, the petitioner herein

on instructions to his counsel withdrew the amendment application Exhibit 42 seeking liberty to file fresh application and accordingly the petition was disposed of by order dated 02.05.2023. In this background, the application Exhibit 75 for amendment of written statement was filed by the defendant. Pertinently by way of amendment, the defendant has proposed to delete paragraphs 11 and 13 of the written statement which contain clear admissions by the defendant that the suit property bearing Gat no.444 is owned by the plaintiff. Considering the nature of the suit seeking removal of encroachment and possession, the admissions given by the defendant in his written statement are vital. By way of amendment, the petitioner has proposed to withdraw the admissions. Further, the application for amendment is filed after evidence of the plaintiff was closed and the said application does not disclose anything to demonstrate due diligence on the part of defendant. A perusal of the application for amendment shows that the only reason put forward seeking amendment is mistake of the earlier counsel who had filed the written statement. Thus, after the evidence of the plaintiff is closed the defendant has simply blamed the earlier counsel and is attempting to withdraw the admissions given in his written statement.

7. The position of law is fairly settled that an amendment to withdraw admissions is not permissible. Further, an amendment causing prejudice or injustice to the other side could not be allowed. The defendant has failed to demonstrate any special circumstances for seeking amendment to withdraw the vital admissions. The learned counsel for the respondent in support of his submission that the defendant cannot be permitted to withdraw vital admissions and set up a new case, has relied upon the judgments in **Bhaurao**

Laxman Honde Versus Namdeo Laxman Honde [2001 SCC OnLine Bom.664] Mah.L.R. 2021]. By placing reliance on the judgments in *Pandit Malhari Mahale Versus Monika Pandit Mahale & Others* [(2020) 11 SCC 549] and *Prabhakar Sadashiv Gokhale & Another Versus Ramesh Shankar Ladkat & Others* [2017 (4) Mh.L.J. 634], he submitted that in absence of any material to show due diligence, the amendment application after evidence has started, cannot be entertained.

8. A perusal of the impugned order shows that the trial Court has given due consideration to the relevant aspects and considering the fact that the amendment application is filed after the evidence was started and since it is an attempt to withdraw the admissions, has rightly passed the impugned order. The petitioner has failed to demonstrate any perversity with the approach adopted by the trial Court.

9. In view of the above mentioned factual and legal aspects, no indulgence is warranted under Article 227 of the Constitution of India with the impugned order. The writ petition deserves to be dismissed and is dismissed with no order as to costs. Rule stands discharged.

(PRAFULLA S. KHUBALKAR, J.)