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

WRIT PETITION NO. 7302/2024

(1) **Mukesh Ranchoddas Popat**,
Aged about 71 years, Occ. Business,

(2) **Sau. Pushpa W/o Mukesh Popat**,
Aged about 65 years, Occ. Household,

(3) **Sanat S/o Mukesh Popat**,
Aged about 38 years, Occ. Business,

(4) **Raj S/o Mukesh Popat**,
Aged about 32 years, Occ. Education

All R/o. Rajendra Prasad Ward,
Warora, Tah. Warora, District Chandrapur

.... **PETITIONER(S)**

// VERSUS //

Yusufbhai S/o Alibhai Bohara,
Aged about 81 years, Occ. Cultivator and Business,
R/o. Ram Mandir Ward, Warora, Tah. Warora,
District Chandrapur

.... **RESPONDENT(S)**

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Shri T.U. Tathod, Advocate for the Petitioner(s)
Ms. A.Lanjewar, Adv h/f Shri N.H. Shams, Adv for the Respondent

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CORAM : M.S. JAWALKAR, J.
APRIL 02, 2025

ORAL JUDGMENT :-

. **RULE.** Rule made returnable forthwith. Heard finally by consent of learned Counsel for the respective parties.

(2) The present Petition is filed by the Petitioners challenging the order dated 05/09/2024 passed below Exhibit 60 by the learned Civil Judge Senior Division, Warora in Special Civil Suit No. 23/2014, whereby the Application for amendment of the written statement filed by the Petitioners came to be rejected without giving any reasons.

(3) The learned Civil Judge Senior Division, Warora, in Paragraph No. 8 of the impugned order, has observed that the Defendant No. 4 does not state as to why he has not pleaded the alleged facts at the time of filing his written statement or before commencement of the trial. Issues were framed on 23/04/2015 and the Plaintiff has already filed his examination-in-chief. After commencement of the trial, such permission to amend the written statement cannot be granted. In fact, in Paragraph No. 3 of the Application for amendment of the written statement, the

Defendant No. 4 has made it clear that at the time of preparation for evidence, the Defendant No. 4 was called to prepare for evidence. He was shown some documents in relation to Form 5. After going through the documents, the Defendant No. 4 felt it necessary to amend the written statement and accordingly, he moved an Application. He has specifically stated that recently, he got knowledge about the documents, and accordingly, sought permission to amend the written statement.

(4) Learned Counsel for the Petitioners drawn my attention to the order dated 23/06/2016 passed below Exhibit 22 which was the Application for amendment in the Plaint. The learned Trial Court allowed the said Application and in Paragraph No. 6, has observed as under:-

> *"6] I have gone through the proposed amendment. Undoubtedly the application is preferred at very late stage when the matter is fixed for evidence. But the amendment is necessary in the interests of justice. It is very well settled law in this respect from catena of decisions that the court should not be too technical and rigid in applying the provisions of the procedural law*

when the relief sought is necessary in the interests of justice."

(5) *Per contra,* learned Counsel for the Respondent submitted that when the above Application was allowed, at the relevant time, the trial was not commenced. However, now the trial has commenced. Therefore, the impugned order passed by the learned Trial Court is just and proper. In support of her contention that an admission given by the Defendant in the written statement cannot be withdrawn by way of amendment, she has relied upon the following citations:-

"(a) Ram Niranjan Kajaria vs. Sheo Prakash Kajaria & others, reported in 2017 (1) AIR JHAR R 414;

(b) Prabhan Pratap Singh vs. Prabhatesh Pratap Singh, reported in 2018 AIR CC 1423 (UTR); and

(c) Nawal Kumar Yadav vs. Sonamuni Marandi, reported in AIRONLINE 2021 JHA 2875"

(6) In my considered opinion, there is no withdrawal of any admission. The Petitioners applied for amendment only when some documentary evidence were noticed at the time of preparation of the evidence. As such, in my considered opinion, the impugned order passed by the learned Civil Judge Senior Division, Warora below Exhibit 60 is liable to be quashed and set aside.

(7) Insofar as the judgments relied on by the learned Counsel for the Respondent are concerned, the same are not applicable in the present set of facts as the grounds for rejection of the amendment Application in the present case is different than that of the grounds in the judgments relied upon by the learned Counsel for the Respondent. In the judgments relied on by the Respondent, there was withdrawal of clear cut admission by way of amendment. However, in the present case, the Application is not rejected on this ground at all. In the Application itself, the reason is given for not filing the Application for amendment before the commencement of the evidence. As such, the amendment needs to be allowed. As the cross of the Plaintiff is

yet to commence, the Plaintiff will get opportunity to amend the Plaint, if required and to cross-examine. No prejudice will be caused to anybody if the amendment Application is allowed.

(8) Hence, I proceed to pass following order:-

O R D E R

(a) The Writ Petition is **allowed**.

(b) The order dated 05/09/2024 passed by the learned Civil Judge Senior Division, Warora below Exhibit 60 in Special Civil Suit No. 23/2024 is hereby quashed and set aside.

(c) The amendment Application (Exhibit 60) is hereby allowed. Amendment to the written statement be carried out within a period of two weeks from today.

(d) The Plaintiff is at liberty to file any consequential amendment to the Plaint, if required, within a period of two weeks thereafter.

(9) The Writ Petition stands **disposed of** in the above terms. Pending Application(s), if any, stand(s) **disposed of**.

(10) Copy of this judgment duly authenticated by Private Secretary be given to the parties to act upon.

(M.S. JAWALKAR, J.)

Signed by: A.P. ANSARI
Designation: PS To Honourable Judge
Date: 03/04/2025 10:32:38