



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

WRIT PETITION NO. 10355 OF 2024

Indubai Dhondu Patil Garde And Others

VERSUS

Khushal Barku Patil Wagh And Others

...

Mr. S. H. Tripathi, Advocate for the Petitioners

Mr. M. K. Bhosale, Advocate for Respondent nos.1 to 4

Mr. S. N. Pawde, Advocate for Respondent no.5

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CORAM : AJIT B. KADETHANKAR, J.

DATED : 09TH MARCH, 2026

ORDER :-

. An application below Exhibit-12 was filed by the present petitioners/plaintiffs in the Regular Civil Suit No.231 of 2019 pending in the Court of learned 2nd Joint Civil Judge, Senior Division, Dhule. This Application was for seeking permission to amend the pleadings as also the title clause in the plaint. Vide order dated 05.10.2021, the learned Civil Judge allowed the application and granted leave to the petitioners/plaintiffs to carry out the amendments pursuant to the application.

2. Mr. S. H. Tripathi, learned Counsel for the petitioners/plaintiffs would submit that accordingly the amendments were carried out on the Exhibit-1 of the Civil Suit.

3. Thereafter, a typed copy of the amended plaint also came to be filed on the record, which was numbered as Exhibit-1/A. The peculiar facts of the case are that there were major discrepancies in the typed copy which is at Exhibit-1/A and the amendment that was carried out by the plaintiffs in handwriting on the Exhibit-1. It appears that neither the plaintiffs nor the defendants even nor the learned Trial Court noticed the discrepancies. In the course of time even the issues were casted on the basis of Exhibit-1/A. Thereafter the plaintiffs realized the mistake that the typed copy of the amended plaint is not in conformity with the leave granted by the learned Trial Court, as also the with the actual amendment carried out by the petitioners on Exhibit-1. Hence, the present applications below Exhibit 105 and 106 came to be filed by the plaintiffs/petitioners before the learned Trial Court.

4. In the application at Exhibit 105, the plaintiffs merely submitted that there are a number of mistakes in the typed copy of the amended plaint, and in view of that the plaintiffs have submitted a new corrected typed copy of amended

plaint, which may be taken on record. Application at Exhibit-106 was for recasting the issues in view of the correct amended plaint. The defendant, at that time did not object the application filed below Exhibit-105, but did object to the application filed below Exhibit-106.

5. The learned Trial Court on 03.08.2024 decided the application on its own merits and was pleased to reject the same by recording that the application at Exhibit-105 was as vague as it could be. The learned Trial Court recorded that the petitioners/plaintiffs had not mentioned what the discrepancy was in the amendments carried out on the Exhibit-1 as also those presented in Exhibit-1/A. The learned Trial Court while concluding the order opined that the petitioners ought to have filed a detailed application giving the specification of the errors committed in Exhibit-1/A so as to give an appropriate opportunity to the other side to respond to the same. As such the application at Exhibit-105 came to be rejected by the learned Trial Court.

6. Consequent to the order passed on application at Exhibit-105, the application at Exhibit 106 also came to be

turned down by the learned Trial Court. The learned Trial Court has rightly observed that the application Exhibit-106 was filed as if holding that the application below Exhibit-105 was allowed by the learned Trial Court. As such the rejection of the application below Exhibit-106 occurred consequent to rejection of the application below Exhibit-105.

7. Mr. S. H. Tripathi, learned Counsel for the petitioners would submit that the application below Exhibit-105 was indeed falling deficit to the exact pleadings on the basis of which the prayer in the application could have been made. He therefore requests that in view of the opinion expressed by the learned Trial Court, the petitioners be given an opportunity to file an appropriate application for bringing on record a typed copy of the correctly amended plaint in view of the amendment carried out by the plaintiffs on Exhibit-1. He would submit that the petitioners be also left at liberty to pray for recasting the issues.

8. Mr. M. K. Bhosale, learned Counsel for the respondents/defendants would vehemently object this application and would alternatively submit that in the event if

the petitioners file such application, the defendants be given an opportunity to defend and respond the same.

9. It is pertinent that amendment in fact is already allowed by the learned Trial Court. Amendment was also carried out in handwriting. The problem is with the typed copy of amended plaint. If the typed copy of the amended plaint i.e. amended Exhibit-1 is sought to be filed, it would be merely a formality to be allowed by comparing the handwritten portion and the typed version. Even otherwise, the addition of pleadings for which amendment was not permitted, can not be considered for any purpose.

10. The record itself speaks that the main application below Exhibit-105 was not objected by the defendants/respondents in the trial. Yet, I have given an opportunity to the respondents/defendants to be heard. In view of this, in my considered opinion, the ends of justice could be achieved if the impugned orders are quashed and set aside and liberty is granted to the petitioners as prayed for to file fresh application. As such, I pass following order:

ORDER

- a. Writ Petition stands allowed.
- b. Impugned order dated 03.08.2024 passed below Exhibit-105 and 106 by the learned 3rd Joint Civil Judge, Senior Division, Dhule in Regular Civil Suit No.231 of 2019 are quashed and set aside.
- c. The petitioners/plaintiffs may file a fresh application for presenting a correct typed copy of the amended plaint in conformity with the amendments made in Exhibit-1 in the suit.
- d. The learned Civil Judge is requested to decide that application as early as possible or within two months from the date of filing of such application.
- e. The petitioners are at liberty to file further application for recasting all issues depending upon the result of their application for filing fresh correct typed copy of amended Exhibit-1.
- f. Writ Petition stands disposed of accordingly.

(AJIT B. KADETHANKAR, J.)