



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

115 WRIT PETITION NO. 1433 OF 2017

SAYED MAHBOOB AHMED SAYED ANWARULLAH

VERSUS

ASAD MOHIYODDIN GULAM MAHMOOD SIDDIQI AND OTHERS

...

Mr. Satyajit S. Bora, Advocate for the Petitioner.

Mr. S. S. Kazi, Advocate for Respondent No.1.

Mr. Pramod C. Mayure, Advocate for Respondent Nos.3, 4, 6 to 10.

...

WITH

CIVIL APPLICATION NO. 14319 OF 2025

IN WP/1433/2017

SAYED MAHBOOB AHMED SAYED ANWARULLAH

VERSUS

ASAD MOHIYODDIN GULAM MAHMOOD SIDDIQI AND OTHERS

...

Mr. Satyajit S. Bora, Advocate for the Applicant.

Mr. S. S. Kazi, Advocate for Respondent No.1.

Mr. Pramod C. Mayure, Advocate for Respondent Nos.3, 4, 6 to 10.

...

WITH

CIVIL APPLICATION NO. 14320 OF 2025

IN WP/1433/2017

SAYED MAHBOOB AHMED SAYED ANWARULLAH

VERSUS

ASAD MOHIYODDIN GULAM MAHMOOD SIDDIQI AND OTHERS

...

Mr. Satyajit S. Bora, Advocate for the Applicant.

Mr. S. S. Kazi, Advocate for Respondent No.1.

Mr. Pramod C. Mayure, Advocate for Respondent Nos.3, 4, 6 to 10.

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CORAM : SIDDHESHWAR S. THOMBRE, J.

DATE : 24th FEBRUARY, 2026

P.C.:-

1. Heard learned Advocates for the respective parties.
2. By the present petition, the Petitioner is aggrieved by the order dated 03.12.2016 passed below Exhibit-262 and 1 and the order dated 02.01.2017 passed below Exhibit-279 by the learned Joint Civil Judge, Junior Division, Ambejogai in R.C.S. No.29 of 2003, whereby the application below Exhibit-262 was allowed party and the application below Exhibit-279 came to be rejected.
3. Learned Advocate for the Petitioner submits that though pursuant to the order below Exhibit-80 dated 24.07.2009, the present Petitioner was directed to be added as a party Defendant, due to oversight his name was not incorporated in the plaint. On noticing the said omission, the Petitioner moved an application below Exhibit-262 seeking addition of his name as Defendant No.11. The learned Trial Court allowed the said application. However, it directed that the suit shall proceed without permitting the Petitioner to file his written statement. Thereafter, the Petitioner filed an application below Exhibit-279 along with his written statement seeking recall of the direction to proceed without written statement, but the same came to be rejected. It is submitted that once the Petitioner was added as Defendant No.11,

denial of opportunity to file written statement amounts to denial of a valuable statutory right and results in serious prejudice.

4. Per contra, learned Advocate for Respondent No.1 supports the impugned orders and submits that sufficient opportunity was available and the Trial Court has rightly exercised its discretion.

5. Having heard the learned Advocates and on perusal of the record, it is evident that the omission to incorporate the Petitioner's name, though directed earlier, was not attributable to the Petitioner. Once the application below Exhibit-262 was allowed and the Petitioner was directed to be added as Defendant No.11 in terms of the earlier order below Exhibit-80, the consequential right to file written statement could not have been curtailed. The observation of the Trial Court that the Petitioner failed to show due diligence overlooks the fact that the amendment itself had not been carried out despite the earlier order. Denial of opportunity to file written statement in such circumstances amounts to adopting a hyper-technical approach and results in failure of justice.

6. In view of the above, the petition is allowed.

7. The impugned order dated 03.12.2016 below Exhibit-262

and 1 is set aside to the extent it directs that the suit shall proceed without the written statement of Defendant No.11. The order dated 02.01.2017 below Exhibit-279 is also quashed and set aside.

8. The written statement filed by the Petitioner shall be taken on record. The learned Trial Court shall proceed with the suit in accordance with law, after affording opportunity to all parties.

9. In view of allowing writ petition, civil applications do not survive and they are also disposed of.

(SIDDHESHWAR S. THOMBRE, J.)

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