

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 4716 OF 2026

Vijay Keru Bharud And Ors

VERSUS

Ashabai Prabhakar Dhanawate And Ors

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Advocate for the Petitioners : Mr. Nagarkar Kiran M.

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CORAM : S. G. CHAPALGAONKAR, J.

DATED : APRIL 29, 2026

PER COURT :-

1. Present petition takes exception to order dated 12.02.2026 passed below Exhibit-171 by Civil Judge Senior Division, Rahata in Special Civil Suit No.42 of 2019, whereby application filed by respondents/defendants seeking amendment in written statement has been allowed.

2. The petitioners are plaintiffs in Special Civil Suit No.42 of 2019 pending before Civil Judge Senior Division, Rahata. The suit is filed for partition and separate possession of suit property. The respondents filed written statement rebutting contentions in plaint. However, when matter was reached at stage of evidence and plaintiffs tendered evidence affidavit, respondents/defendants filed an application below Exhibit-171 seeking amendment in written statement. The Trial Court allowed application subject to cost of Rs.5,000/-. The petitioners/plaintiffs were permitted to file additional

evidence affidavit in pursuance to amendment permitted in written statement.

3. Mr. Nagarkar, learned advocate appearing for petitioners submits that Trial Court could not have allowed amendment when matter reached to stage of evidence and trial is commenced. According to him, facts which were within knowledge of defendants at the time of written statement are sought to be brought on record by way of amendment without explaining delay.

4. Having considered submissions advanced and on consideration of material tendered into service, this Court finds that present writ petition takes exception to order permitting amendment in written statement. Admittedly, petitioners/plaintiffs have tendered evidence affidavit, however, cross-examination is not yet commenced. As such, it cannot be said that trial in suit is commenced. The proviso to Rule 17 of Order VI of Civil Procedure Code would not apply at this stage. Importantly, petitioners are given liberty to file additional evidence affidavit in pursuance to amendment permitted in written statement. On consideration of nature of amendment, it is not discernible that defendants want to withdraw any admission or take inconsistent position that would prejudice petitioners right. It is trite that in case of amendment in written statement, liberal approach has to be adopted. The Trial Court has rightly applied aforesaid principles in facts of case.

5. This Court do not find any reason to cause interference in impugned order under Article 227 of Constitution of India. Hence, writ petition stands rejected.

(S.G. CHAPALGAONKAR, J.)

Mujaheed//