IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIRCUIT BENCH AT KOLHAPUR

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 5583 OF 2026

Ramesh Appasaheb Desai ...Petitioner

Versus

Dilip Appasaheb Desai And Ors. ...Respondents

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Adv. Jaydeep Rasam a/w Adv. Allan Bardeskar and Adv. Supriya Rasam, Advocate for Petitioner.

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CORAM : SHAILESH P. BRAHME, J.

DATE : 28th OCTOBER, 2026.

P.C. :

The petition is directed against the order dated 31.07.2026 passed below Exhibit – 30 in R.C.A. No.75 of 2014, rejecting the application for amendment to the written statement at the appellate stage.

2. The learned counsel for the petitioner submits that inadvertently the relevant pleadings remained to be incorporated in the written statement. There is already foundation and no new case is being introduced by the proposed amendment. The proposed amendment is stated to be necessary for deciding real controversy between the parties. It is submitted that for want of legal knowledge, the pleadings could not

be incorporated in the written statement on earlier occasion.

3. I have perused the impugned order, the decree passed by the Trial Court in Special Civil Suit No.309 of 2010, original pleadings of the parties and application Exhibit - 30. Respondent Nos.1 and 2 had filed Special Civil Suit No.309 of 2010 for partition and possession, which was contested by the petitioner, and in written statement a specific plea that there was already partition in the family was raised in paragraph No.13 of the written statement. The suit was decided on merits. By reasoned order, it was decreed on 20.01.2014. Being aggrieved, RCA No.75 of 2014 has been filed by the petitioner. Application Exhibit - 30 seeking amendment to written statement was filed on 21.04.2015. It has not been prosecuted for more than 10 long years. It is rejected on 31.07.2026, and the petitioner has a grievance that amendment is necessary to decide the controversy.

4. The petitioner has already raised plea in paragraph No.13 of the written statement regarding partition in the family. By way of proposed amendment, it is sought to be contended that the partition had taken place in the year 1965 distributing the properties to the children of deceased - Appasaheb. This fact was within the knowledge of the petitioner. It is incomprehensible as to why he waited for more than 10 years. The parties went on trial, adduced evidence, and now at the appellate stage the written statement is sought to be amended. The

petitioner does not satisfy the test of due diligence. The Trial Court is right in rejecting the application.

5. I do not find that there is any merit in the matter. The plausible view has been taken. The amendment is not founded on subsequent events or newly discovered fact. The petition lacks merit. It stands dismissed accordingly.

[SHAILESH P. BRAHME, J.]