HUSENBASHA RAHAMAN NADAF
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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIRCUIT BENCH AT KOLHAPUR
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.17840 OF 2024

Bharati Shrimant Koshti & Ors. ….Petitioners
Versus
Shirajuddin Abbas Pathan & Ors. ….Respondents

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Mr. Kuldeep U. Nikam a/w. Pratik Patil, Unmesh Jamdar & Rushikesh Desai, Advocates for the Petitioner
Mr. Padmanabh D. Pise, Advocate for Respondent 2A, 2B & 3.

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CORAM : M.M. SATHAYE, J.
DATE : 25th FEBRUARY, 2026

P.C. :

1. The Petitioners are challenging the impugned order dated 13.08.2024 passed below Exh. 97 in Reg. Civil Suit No. 280 of 2008 by 2nd Jt. Civil Judge, Senior Division, Sangli by which application for amendment is rejected.

2. The Petitioners have filed the said suit for injunction and for mandatory direction for restoring the suit property to its original form in case any changes are made.

3. Learned counsel for the Petitioners submitted that the amendment is technical in nature and they only want to include defendant Nos. 1 and 2 in the prayer for injunction. He submitted that the Court is empowered to amend the proceedings at any stage even after commencement of the trial. He submitted that lenient view be taken and amendment should be allowed for complete justice between the parties and for avoiding multiplicity of the proceedings. He relied on Judgment of **LIC Vs. Sanjeev Builders [Criminal Appeal**

arising out of SLP (C) No. 22443 of 2019 Judgment dated 01.09.2022.] in support of his case.

4. Learned counsel for Respondent Nos. 2A, 2B and 3 supported the impugned order. He submitted that the Trial Judge has recorded clear finding that since the Trial has commenced and no due diligence is found to have been exercised by the Petitioners, the amendment cannot be granted. He relies on the judgment of **Pandit Malhari Mahale Vs. Monika Pandit Mahale & Ors. [(2020) 11 SCC 549],** in support of his case.

5. I have considered the rival submissions. Perused the record.

6. It is seen from the record that prior to filing present amendment application the Petitioners had earlier filed one more application Exh. 81 for amendment in the prayers by which Defendant Nos. 1 & 2 were excluded from the prayer clause and Defendant Nos. 3 and 4 were included. Thus, it is apparent that the Petitioners on their own motion removed the names of Defendant Nos. 1 & 2 from the prayer clause of injunction. In such situation, the present application was filed. Perusal of the earlier application Exhibit 81 indicates that it is casually stated by the Petitioners that 'recently while studying the documents, it is found that the proposed amendment has remained to be incorporated by inadvertence'.

7. Perusal of present application Exh.97 indicates that after the suit was fixed for cross-examination, the application was moved contending that for technical difficulty, the present amendment has remained to be incorporated. In present application, the proposed amendment is for again inclusion of Defendant Nos. 1 & 2 in the

prayer clause.

8. Therefore, it is clear that both the amendment applications have been made in most casual manner and it also indicates that the Petitioners are not serious about against whom the prayer of injunction is required.

9. Initially, Defendant Nos. 1 & 2 were removed from the prayer and Nos. 3 and 4 were included. Now again, the Petitioners want to include Defendant Nos. 1 & 2. Such flip-flop undertaken by the Petitioners cannot be permitted as it clearly indicates lack of due diligence.

10. The provisions of Order VI Rule 17 of Civil Procedure Code, 1908 ('CPC' for short) was amended in 2002 with a clear intention of curtailing amendments after the trial commences for expeditious disposal, unless due diligence is established. The proviso to amended Order VI Rule 17 mandates that unless the Court comes to the conclusion that party could not have raised the matter regarding amendment in spite of due diligence, no application for amendment shall be allowed. The proviso is mandatory in nature, the word used is 'shall'.

11. In the judgment of **Pandit Malhari Mahale (Supra)**, the Hon'ble Supreme Court had found that the satisfaction of the Court about due diligence was not recorded and as such the amendment application was dismissed by the Hon'ble Supreme Court.

12. So far as the judgment relied upon by the learned counsel for the Petitioners in case of **LIC Vs. Sanjeev Builders (Supra)** concerned, the guidelines are summarized in paragraph No. 70. It is clarified by

the Hon'ble Supreme Court that all amendments are to be allowed which are necessarily for determining the real question in controversy provided, by the proposed amendment the party seeking amendment does not seek to withdraw any clear admission by the party and unless by the amendment, the other side loses a valid defence. In the present case, by earlier amendment Defendant Nos. 1 and 2 were excluded. Now Defendant Nos. 1 and 2 are sought to be included again. Therefore Defendant No. 1 & 2 would lose a valid defence that Plaintiffs did not want to claim any relief against them. Allowing the present amendment would also amount to withdrawal of an admission by Plaintiffs that they do not want to pray any relief against Defendant Nos.1 & 2. In that view of the matter, facts of the present case fall under the exceptions provided by the Hon'ble Supreme Court in the case of **LIC Vs. Sanjeev Builders (Supra).**

13. Viewed in the light of what is observed above, when the impugned order is perused, in paragraph No.10 thereof, the Trial Court has considered the changing stands taken by the Petitioners. The Trial Court has considered that suit is of 2008 (governed by amended CPC) and the same is part-heard and is at the stage of cross-examination of the witness of the Plaintiffs. On the basis of material on record, the Trial Court has held that due diligence is not established. Therefore amendment can not be allowed. The view taken by the Trial Court is most probable view and there is no material irregularity or perversity for this Court to interfere in writ jurisdiction.

14. In the aforesaid facts and circumstances and for reasons indicated above, writ petition is dismissed. No order as to costs.

15. All concerned to act on duly authenticated or digitally signed copy of this order.

(M.M. SATHAYE, J.)