

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 4953 OF 2026

Dilip Narayan Khalate ...Petitioner

Versus

Malhari Babusha Bhagwat and ors. ...Respondents

Mr. Nikhil Wadikar, a/w Pradip Zende, for the Petitioner.

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CORAM: N. J. JAMADAR, J.

DATED: 16th APRIL, 2026

ORDER:-

1. Heard Mr. Wadikar, the learned counsel for the petitioner.
2. The challenge in this petition is to an order dated 23rd March, 2026, whereby an application preferred by the petitioner seeking permission to amend the plaint under the provisions of Order VI Rule 17 of the Code of Civil Procedure, 1908, came to be rejected.
3. At the outset, Mr. Wadikar submitted that, the suit is posted for final arguments. Yet, in the facts of the case, where the petitioner – plaintiff sought amendment to add the relief of declaration that the plaintiffs has a right to use the suit way by way of easement of necessity, which was necessary for a just decision of the suit, the trial court ought not to have rejected

the application. It was submitted that, initially, the petitioner had filed the suit for injunction simpliciter. The relief of declaration was inadvertently not claimed. Therefore, it was necessary to seek a declaration as to the existence of the easementary right. Thus, the stage at which the application for amendment was filed was not of decisive significance. Reliance was sought to be placed on a judgment of a learned Single Judge of this Court in the case of *Bharat Petroleum Corporation Ltd. vs. Precious Finance Pvt. Ltd.*¹.

4. I am afraid to accede to the submissions of Mr. Wadikar, I have perused the averments in the application seeking permission to amend the plaint. The application is conspicuously silent about due diligence and the explanation as to why the application for amendment could not be filed before the commencement of the trial. The only reason that can be discerned from the application was that, on account of inadvertence the prayer for declaration was not sought.

5. In view of the pronouncement of the Supreme Court in the case of *Vidyabai and others vs. Padmalatha and another*², the satisfaction of the test of due diligence is a jurisdictional fact. In the absence of explanation which accounts for the

¹ 2007(1) Mh.L.J. 331.

² (2009) 2 Supreme Court Cases 409.

circumstances due to which the application for amendment could not be filed before the commencement of the trial, the learned Civil Judge was justified in declining to grant permission to amend the plaint at the fag end of the trial.

6. What accentuates the situation is the fact that, the plaintiffs had earlier sought an amendment to the plaint and that application was allowed, and no reason could be offered as to why the proposed amendment was not sought at that time.

7. Secondly, the trial Court was of the view that, if permitted, the relief professed to be sought by the petitioner would be barred by law of limitation, qua the prayer for declaration. Since the cause of action arose on 15th January, 2019, in accordance with the provisions of Article 58 of the Limitation Act, the plaintiffs ought to have instituted the suit within the period of limitation from the date of occurrence of the cause of action.

8. It is true, limitation is a mixed question of law and fact. However, where it could be demonstrated that a party had not sought the relief of declaration despite having amended the plaint once, and the absence of any justifiable explanation for not filing the application before the commencement of trial, the question of bar of limitation cannot be brushed aside as a mixed question of law and fact.

9. In the aforesaid view of the matter, at this stage, when the suit is posted for final arguments, this Court does not find any justifiable reason to interfere with the impugned order.

10. Hence, the following order:

: O R D E R :

The petition stands dismissed.

[N. J. JAMADAR, J.]