

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, AT NAGPUR.**

WRIT PETITION NO.1094 OF 2014

(Padmakar s/o Nilkanth Surkar ..vs.. Bhagwan @ Bhagwantrao s/o Wamanrao Kokate and another)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

CORAM : Z.A. HAQ, J.

DATED : 07-12-2015

Heard Shri P.S. Tidke, learned Advocate for the petitioner.

None appears for the respondents though served.

2. The petitioner/plaintiff has filed this writ petition challenging the order passed by the trial Court on 10-09-2013, in so far as it rejects part of the proposed amendment.

3. The petitioner/plaintiff has filed Special Civil Suit No.904/2011(renumbered as Special Civil Suit No. 2718/12) against the respondents praying for decree for specific performance of agreement. In paragraph No.4 of the plaint, it is stated that the agreement between the parties was executed on 17-08-2010 and the sale-deed in respect of portion of plot was to be executed till 17-11-2010. The petitioner/plaintiff subsequently filed the application (Exhibit No.16) seeking permission to amend the plaint. The learned trial Judge has partly allowed the application and has permitted the

petitioner/plaintiff to carry out the amendment in line No.9 of paragraph No.3 on page No.2 of the plaint. So far as the prayer made on behalf of the petitioner/plaintiff to amend the dates occurring in paragraph No.4 and paragraph No.5 of the plaint, it has been rejected on the ground that if the petitioner/plaintiff is permitted to amend the plaint as prayed, it would cause prejudice to the respondents/defendants.

4. Shri P.S. Tidke, learned Advocate for the petitioner/plaintiff has pointed out the copy of plaint of Special Civil Suit No.2930/2012 which is filed by the petitioner against the respondents praying for decree for specific performance of contract dated 17-08-2010. It is submitted that the mistakes in dates have occurred in paragraph No.4 and paragraph No.5 of the Special Civil Suit No.904/2011(renumbered as Special Civil Suit No. 2718/12) due to inadvertence and the dates as mentioned in paragraph No.4 and paragraph No.5 of the plaint in Special Civil Suit No.2930/2012 have been typed. It is submitted that the trial has not yet commenced and no prejudice would be caused to the respondents if the proposed amendment is allowed.

5. The learned Advocate for the petitioner/plaintiff has further pointed out at this stage that again due to inadvertence the date "17-11-2010" mentioned in

paragraph No.6 of the plaint of Special Civil Suit No. 904/2011(renumbered as Special Civil Suit No.2718/12) is required to be amended and substituted by the date “13-11-2010”. However, this amendment is not sought in the application (Exhibit No.16).

6. On examining the documents placed on the record of the writ petition and the impugned order, I find that the learned trial Judge has not properly adverted to the issue which fell for consideration. The learned trial judge has adopted the hyper-technical view while rejecting the proposed amendment by the order dated 10-09-2013. In my view, the following order will subserve the ends of justice:

- (i) The impugned order in so far it rejects the prayer of the petitioner/plaintiff for amending the dates in paragraph No.4 and paragraph No.5 of the plaint in Special Civil Suit No. 904/2011(renumbered as Special Civil Suit No.2718/12), is set aside.
- (ii) The matter is remitted to the learned trial Judge for considering the prayer made by the petitioner/plaintiff, afresh.
- (iii) The petitioner/plaintiff is permitted to file application seeking amendment of date in paragraph No.6 of the plaint in Special Civil Suit No.904/2011 (renumbered as Special

Civil Suit No.2718/12). If such application is made, the learned trial Judge shall decide it also alongwith the application (Exhibit No.16) after hearing the respondents/defendants, according to law.

7. The writ petition is allowed in the above terms. In the circumstances, the parties to bear their own costs.

JUDGE

pma