

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
APPELLATE SIDE
NAGPUR BENCH, NAGPUR

WRIT PETITION NO. 5933 OF 2014
Sagar Sheshrao Bhanawat Vs. Vinod Ramdas Chavhan

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

Court's or Judge's Order

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 Shri N. A. Gaikwad Adv for petitioner.
 Shri A. V. Bhide Adv for respondent.

CORAM: A. S. CHANDURKAR J.

DATED: JULY 06, 2015.

Challenge in the present writ petition is to the order passed by the trial Court permitting the plaintiff to amend the plaint. The reason for seeking amendment to the plaint was after the plaintiff changed his counsel it was noticed that there were certain mistakes/errors in the plaint and same were sought to be corrected. It was stated in the application that the case was fixed for filing affidavit in lieu of evidence. The trial Court by the impugned order allowed the application for amendment.

Shri N. A. Gaikwad learned counsel appearing for the petitioner submitted that though it was mentioned that only typographical errors were sought to be corrected the amendment as sought was something more. According to him the amendment as sought amounted to changing the nature of the claim as well as enhancing the monetary relief as sought. He submitted that as the issues had been framed, the trial was deemed to have commenced as the case was fixed for filing affidavit. He placed reliance on the judgment of

the Supreme Court in *Vidyabai and others Vs. Padmalatha and another* (2009) 2 Supreme Court Cases 409.

Shri A. V. Bhide, learned counsel appearing for the respondent supported the impugned order. He stated that affidavit in lieu of evidence was yet to be filed and hence the trial had not commenced. He submitted that amendment was necessary for proper adjudication of the claim.

Having heard the respective counsel I find that the trial Court did not commit any error in allowing the application for amendment. The nature of amendment as sought is in relation to various figures and the monetary claim. The amendment as proposed did not change the nature of the proceedings. Similarly, the applicatiuon was moved prior to filing affidavit in lieu of evidence. In the light of the law laid down in *Vidyabai* (supra) therefore, the trial had yet to commence. Hence, by allowing application for amendment the trial Court did not commit any jurisdictional error. Hence, there is no case made out to interfere. Writ petition is therefore dismissed. No costs. Needless to state that defendant is at liberty to carry out consequential amendment.

JUDGE

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