

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

WRIT PETITION NO. 4513 OF 2015

Bhalchandra s/o Laxmanrao Thamke and others

-vs-

M/s. Samyak Builders & Developers, Nagpur, thr.its Proprietor and others

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

Court's or Judge's Orders.

Mr. C.B.Dharmadhikari, counsel for the petitioners.
None for the respondents.

CORAM : SMT. VASANTI A NAIK,J.

DATE : 31.01.2017.

By this writ petition, the petitioners challenge the order of the Ad hoc District Judge-3, Nagpur rejecting an application filed by the petitioners under order VI rule 17 of the Code of Civil Procedure for amendment of the appeal memo.

The petitioners had filed a suit against the respondents for declaration and permanent injunction. The suit of the petitioners was partly decreed and the trial court declared that the development and sale agreement executed between the petitioners and the defendant No.1 was cancelled, subject to securing the rights of the defendant Nos.2 and 3. Certain other declarations were also granted and the petitioners were directed to pay the deficit court fees of Rs.38,700/- within one month. The petitioners challenged the part of the judgment of the trial court, in so far as it rejected certain prayers made by the petitioners and so far as it directed the petitioners to pay the deficit court fees. Since there was some delay in filing the first appeal, the petitioners filed an application for condonation of delay in filing the first appeal. When the matter was pending for consideration of the application for condonation of delay, the petitioners filed an application under order VI rule 17 of the Code of Civil Procedure for amendment of the appeal memo so as to raise an additional ground

pertaining to the valuation. The learned Ad hoc District Judge-3, by the impugned order dated 07/03/2015 rejected the application filed by the petitioners. The petitioners have impugned the said order in the instant petition.

Though a notice for final disposal was issued to the respondents and the respondents are duly served, none appears on behalf of the respondents.

On hearing the learned counsel for the petitioners and on a perusal of the impugned order, it appears that the learned Ad hoc District Judge-3 was not justified in rejecting the application filed by the petitioners on the ground that the petitioners wanted to avoid to go to the appropriate forum, i.e., the High Court for challenging the judgment of the trial court. The petitioners had only desired to add an additional ground in the memorandum of appeal that related to the payment of court fees under the Maharashtra Court Fees Act. The Ad hoc District Judge-3 ought not have decided the application for amendment before the application for condonation of delay in filing the appeal was decided. The learned Ad hoc District Judge ought to have considered that the amendment sought to be made by the petitioners related only to the addition of one ground in the memorandum of appeal that pertained to the valuation of the suit as per the provisions of the Maharashtra Court Fees Act. There was no reason for the learned Ad hoc District Judge-3 to reject the application for raising an additional ground. A ground may be finally accepted or rejected, but permission cannot be denied to a party to raise an additional ground without recording cogent reasons for the denial. In the instant case, the only reason for rejecting the application of the petitioner is that the petitioner wanted to avoid the appropriate forum, i.e., the High Court and desired that the matter be decided by the learned District Judge. That could not have been the reason for rejecting the application made by the petitioners for adding an additional ground. Even otherwise, it is now informed to this court by the learned counsel for the petitioners that with the change in the

norms pertaining to the pecuniary jurisdiction, the District Judge would be empowered to hear the appeals that are valued up to rupees one crore. Be that as it may, since the learned Ad hoc District Judge-3 was not justified in rejecting the application for the reason mentioned in the impugned order, the impugned order is liable to be quashed and set aside.

Hence, for the reasons aforesaid, the writ petition is allowed. The impugned order is quashed and set aside. The appellate court may decide the application filed by the petitioner for raising the additional ground, after the application for condonation of delay in filing the appeal is decided. Order accordingly. No costs.

JUDGE

KHUNTE