

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

CIVIL APPLICATION (CAS) NO.574 OF 2018
IN
SECOND APPEAL NO.572 OF 2017

Satish Pralhadrao Ingole

-vs-

Vandana w/o Vasantrya Dhekane

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

Court's or Judge's Orders.

Shri M. G. Sarda, Advocate for appellant.

Shri V. K. Paliwal, Advocate for respondent/applicant.

CORAM : A.S.CHANDURKAR, J.

DATE : June 25, 2018

By this application the original plaintiff seeks permission to amend the plaint and add a prayer therein that the defendant and legal heirs be directed to hand over vacant possession of the suit property. In the application it is stated that the suit is filed for specific performance of contract. However, prayer for possession was inadvertently not made in the suit. Relying on the provisions of Section 22(2) of the Specific Relief Act, 1963 it is prayed that the application be allowed.

The application is opposed by the learned counsel for the non-applicant/defendant. It is submitted that such objection was raised by the defendant before the appellate Court and despite that the plaintiff did not take steps to amend the plaint. As a result a right was

created in the defendant and therefore the amendment should not be allowed. The learned counsel placed reliance on the decision in ***Mahmood Khan and anr. vs. Ayub Khan and ors. 1978 All.W.C. 457.***

Heard the learned counsel for the parties. In the light of provisions of Section 22 of the said Act the Court is empowered to permit the plaintiff to amend the plaint at any stage of the proceedings. This Court in ***W.P. No.5310/2017 (Praveen s/o Champatrao Revatkar vs. Hanuman s/o Surajmal Sharma)*** decided on 15/03/2018 by relying upon other decisions has taken a view that such amendment is liable to be granted and the rigors of provisions of Order-VI Rule 17 of the Code of Civil Procedure, 1908 would not be applicable. In that view of the matter the application is liable to be allowed. The decisions relied upon by the learned counsel for the non-applicant does not deal with the provisions of Section 22 of the said Act.

Accordingly, the application is allowed and the plaintiff is permitted to amend the prayer clause in the plaint. Amendment be carried out within one week.

Civil Application is allowed and disposed of.

JUDGE