

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO.4666 OF 2017

(SAU. SUNANDA GAJANAN PATIL...VS.. PRAKASH WASUDEO GADGE)

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

Court's or Judge's orders

Shri S.D.Chopde, Advocate for Petitioner.
Shri M.G.Sarda, Advocate for Respondent.

CORAM : Z.A.HAQ, J.

DATED : JANUARY 22, 2018.

Heard.

2. The petitioners/original defendants have challenged the order passed by the trial Court by which the application(Exh.21) filed by the defendants seeking permission to amend the written statement is rejected.

3. The respondent/ plaintiff has filed civil suit praying for decree for removal of encroachment for possession and for *mesne* profit.

The defendants opposed the claim of the plaintiff by filing written statement. The trial progressed and affidavit in lieu of evidence of the plaintiff has been filed. At this stage, the defendants filed application(Exh.21) seeking permission to incorporate the amendment in the written statement and by it the defendants are seeking to bring on record challenge to the title of the plaintiff.

4. The learned trial Judge has dismissed the application (Exh.21) observing that the defendants have not

been able to overcome the bar created by proviso below Rule 17 of Order 6 of the Code of Civil Procedure as they have not shown that in spite of exercise of due diligence they could not bring on record the facts now sought to be brought on record by the proposed amendment. The conclusions of the learned trial Judge are based on proper appreciation of the facts and law. There is neither any illegality nor error of jurisdiction which necessitates interference by this Court in the extraordinary writ jurisdiction.

The writ petition is **dismissed**. In the circumstances the parties to bear their own costs.

As the civil suit is of 2013, the learned trial Judge is directed to dispose the civil suit within six months.

JUDGE

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