

DDR

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 5429 OF 2019

Kishor Devidas Kale

..Petitioner

vs.

Rohit Sharad More

..Respondent

Shri Sagar Sankpal i/b. Shri R.S. Gangawane for petitioner.
None for respondent.

CORAM : M.S.KARNIK, J.

DATE : 30th SEPTEMBER, 2019

P.C.

Not on Board. Taken on Board.

2. Heard learned counsel for the petitioner.
3. Despite service of notice no one appeared on behalf of the respondent.
4. The present Petition is filed challenging an order dated 23rd July, 2018 passed by the trial Court rejecting the application below Exhibit 22 for amendment in the plaint.
5. The petitioner – plaintiff filed an application under Order 6 Rule 17 of the Code of Civil Procedure for amending the Plaint for bringing on record the subsequent events. The suit is filed by the plaintiff under Section 6 of the Specific Relief Act, 1963 in respect of the suit flat which he claims to be exclusive owner and the title

holder. It is the case of the plaintiff that on the basis of some forged and fabricated documents the defendant dispossessed the plaintiff from the suit flat. By way of the amendment the plaintiff wanted to bring on record the events in as much as the defendant created third party right, title and interest to the suit flat.

6. The application for amendment is rejected on the ground that the amendment was not sought immediately after these facts are brought to the notice of the plaintiff.

7. None has appeared on behalf of the respondents though respondents are duly served.

8. In my opinion, the application for amendment can be allowed by imposing cost on the plaintiff. No doubt, the plaintiff did not immediately make an application for amendment. However, recording of the evidence is yet to commence. In these circumstances, the respondents can be adequately compensated by imposing cost on the plaintiff.

9. The Petition is allowed subject to payment of cost of Rs.1000/- to the respondents. The cost to be paid within a period of 2 weeks from the date of uploading of this order.

10. The impugned order is set aside.

11. The application Exhibit 22 is allowed.

12. Amendment to be carried out within a period of 3 weeks from the date of the payment of the cost.

13. The defendant is at liberty to file additional written statement to the amended Plaint.

14. The Petition is disposed of.

(M.S.KARNIK, J.)

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