

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

WRIT PETITION NO.1463 OF 2019

Ramashankar s/o Jiralal Prasad
and anr.

... Petitioner

-vs-

Deorao s/o Santoshrao Radke
and ors.

... Respondents.

Shri Pratik Khedikar, Advocate for petitioner.
Shri R. I. Agrawal, Advocate for respondents.

CORAM : A.S.CHANDURKAR, J.

DATE : April 05, 2019

P.C.

In this writ petition the order passed below Exhibit-45 permitting the plaintiff to amend the pleadings is sought to be challenged.

The respondents are the original plaintiffs who had initially filed suit for possession of the property that was occupied by the petitioners herein. During pendency of the said suit the plaintiffs sought to amend the plaint by filing application below Exhibit-45. In the said amendment it was sought to be pleaded that the original defendant was in arrears of rent during pendency of the suit. Similarly the original defendant in June 2013 had vacated the suit premises and had shifted to another residence. Notice was issued to the legal heirs of the defendant and thereafter the application came to allowed.

2. It is submitted by the learned counsel for the petitioner that sufficient opportunity was not given to the legal heirs of the defendant to

file reply to the application for amendment as well as the application for bringing on record the legal heirs of the defendant and to contest the same. The nature of amendment was such that it affected the rights of the legal heirs of the defendant and therefore opportunity ought to have been given to them.

3. On behalf of the respondents it is submitted that possession of the suit premises was already received by the respondents on 21/02/2019. As referred in the order dated 25/02/2019 passed in Writ Petition No.567/2019 the proceedings are pending only for determination of mesne profits. Despite grant of sufficient opportunity, reply was not filed by the petitioners to the applications at Exhibits-45 and 46.

4. Heard the learned counsel and perused the roznama which would indicate that after the applications were filed on 14/08/2018, notice was issued to the legal heirs to file reply. On 03/09/2018 the legal heirs sought time which was granted. The proceedings were adjourned on about six dates and thereafter the matter was posted on 30/10/2018. It is thereafter that the Court has proceeded to allow the applications. It is not found that the trial Court failed to grant sufficient opportunity to the legal heirs. Moreover, it is always open for the defendants to consequently amend their pleadings to counter the amendment as granted. Hence I do not find any jurisdictional error when the trial Court allowed the applications below Exhibits-45 and 46. In that view of the matter, there is no reason to interfere in writ jurisdiction.

The Writ Petition stands dismissed with no order as to costs.

JUDGE