

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

WRIT PETITION NO.3876 OF 2019

(SAMEER DEVENDRA VIRMANI & ANR...VS.. SMT. SHOBHARANI MADANLAL POPLI.)

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

Court's or Judge's orders

Shri P.M.Pande, Advocate for Petitioners.
Shri S.S.Sitani, Advocate for Respondent.

CORAM : Z.A.HAQ, J.

DATED : JUNE 06, 2019.

Heard.

2. The original defendants have challenged the order passed by the trial Court rejecting the application (Exh.49) filed by them under Order 6 Rule 17 of the Code of Civil Procedure seeking permission to amend the written statement. By the proposed amendment, the defendants seek permission to bring on record the fact that the son of the plaintiff purchased property in 1987 and therefore, the need shown by the plaintiff for seeking decree for eviction against the defendants cannot be accepted. The learned trial Judge has recorded that the application is filed by the defendants after commencement of trial i.e. at the stage when the cross-examination of the witness of the plaintiff is complete. It is further recorded that the defendants have not been able to show that they were not having knowledge about the facts which they now want to bring on record.

3. The pleadings in sub-paragraph (2) of paragraph No.11 of the written statement show that the defendants were

having knowledge about purchase of another property by the members of the family of the plaintiff. The written statement was filed in June 2015. In these facts, failure on the part of the defendants to file the amendment application before commencement of the trial assumes importance.

4. In the above facts, I find that the defendants have not been able to wriggle out of the proviso below Rule 17 of Order 6 of the Code of Civil Procedure which takes away the jurisdiction of the Court to allow the party to amend the pleadings, unless it is shown that the party was not in a position to bring all the facts on record earlier.

5. I find that the learned trial Judge has properly considered the matter and it cannot be said that there is any illegality or error of jurisdiction which necessitates interference by this Court in the extraordinary jurisdiction.

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

JUDGE