

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

WRIT PETITION NO. 3838/2019

Ramkrishna A. Poddar

..VS..

Satyendra A. Pandey

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

Court's or Judge's orders

Shri S.S. Sharma, Advocate for the petitioner

CORAM : Z.A.HAQ, J.
DATED : 10/06/2019

Heard.

The respondent – original plaintiff filed the civil suit praying for decree for injunction restraining the present petitioner – defendant from interfering with his possession over the suit premises. The respondent – plaintiff had also filed an application praying for temporary injunction. The plaintiff could not succeed in getting the temporary injunction as prayed for by him. As the trial progressed, the plaintiff filed an application (Exh. 19) under Order 6 Rule 17 of the Code of Civil Procedure seeking permission to amend the plaint to bring on record the subsequent events. The plaintiff contended that as he failed to get the order of temporary injunction, the defendant had taken possession of the suit premises. By the proposed amendment, the plaintiff sought to incorporate the prayer for grant of decree for possession. This application is allowed by the impugned order.

The impugned order is challenged on the ground that the trial Court has committed an error of jurisdiction by allowing the application (Exh. 19) overlooking the fact that if the proposed amendment is permitted, then the suit will be converted into the proceedings under Section 6 of the Specific Relief Act, and it will have to be tried as summary suit and not as regular civil suit. The other ground is that the amended civil suit will have to be tried by the Court of Small Causes, and therefore the jurisdiction of the Court where the civil suit is pending will be ousted.

After examining the impugned order, I find that the points raised on behalf of the defendant to oppose the amendment application are not considered on merits by the learned trial Judge. The application (Exh. 19) is allowed considering the bare facts as pleaded by the plaintiff. In my view, it is still open for the defendant to agitate the legal issues before the trial Court at appropriate stage. Hence, I am not inclined to interfere with the impugned order.

The writ petition is **dismissed**. No costs.

JUDGE

Ansari