

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

CIVIL APPLICATION (CAA) NO. 42 OF 2019

IN

APPEAL AGAINST ORDER NO. 36 OF 2018

**(M/s Plaxo Pipes and Films Pvt. Ltd., Nagpur through its Director. Vs. M/s
Plasto Containers (I) Pvt. Ltd., Nagpur through its plant head Mohan**

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

Court's or Judge's orders.

Ms. Sandhya N. Maniyar, Counsel for the appellant.
Mr. G.B. Sawal, Counsel for the respondent.

CORAM : S.M. MODAK, J.

DATE : 29th NOVEMBER, 2019.

This is appellant defendant's application for seeking permission to carry out the amendment in the appeal memo. The trial Court as per the impugned order has restrained the defendant. It is in respect of use of trade mark "PLASTO". The said order is challenged by the defendant.

2. Appellant/defendant claims that when the written statement was filed before the trial Court, certain facts were not pleaded in the written statement. Now, the defendant has appointed a new advocate in this appeal and hence defendant feels that those details are required to be pleaded in the appeal memo. Similar application has been filed before the trial Court seeking leave to carry out the amendment in the written statement. It is submitted that the said application has been allowed.

3. The appellate Court has to decide about the correctness of the order mainly on the basis of material which are available before the trial Court at the time of passing of the order. It does not mean

that the aggrieved person who has approached the higher Court cannot produce additional materials. However, there are certain provisions for that. One of said provisions is contained in Order 41 Rule 27 of Code of Civil Procedure which permits party can produce additional evidence.

4. Allowing amendment is one thing and considering the materials which are produced in support of the amendment while deciding the appeal is another thing. I think the appellant can be permitted to carry out the amendment in the appeal memo. However, so far as considering the new materials is concerned, the appellant has to make out a case before this Court that new material can be considered. Hence, the direction.

ORDER

- i. Application is allowed.
- ii. Appellant is permitted to carry out the amendment as prayed in the appeal memo.
- iii. Amended copy be served upon the respondents.
- iv. Respondent is permitted to file reply if they wants.
- v. Appellant has to satisfy this Court that the materials produced alongwith the amendment application can be considered while hearing this appeal.
- vi. Application is disposed off.

APPEAL AGAINST ORDER NO. 36 OF 2018

Stand over after two weeks.

JUDGE