

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

WRIT PETITION NO. 4986/2019

Satish L. Banginwar & anr.

..VS..

Vanita R. Patil & ors.

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

Court's or Judge's orders

Shri G.R. Kothari, Advocate for the petitioner(s)
Ms. T.H. Khan, AGP for the respondent/State

CORAM : Z.A.HAQ, J.
DATED : 22/07/2019

Heard.

The original defendant nos. 5 and 6 have challenged the order passed by the trial Court, rejecting the application (Exh. 237) filed by them under Order 6 Rule 17 of the Code of Civil Procedure seeking permission to amend the written statement. After examining the relevant aspects, the learned trial Judge has recorded his conclusions in para nos. 13 and 14 of the impugned order as follows:-

“13. The plaintiff closed evidence on 11.1.2017 after examining five witnesses. Evidence of defendant no. 2 Marotrao is also recorded. None of the heirs of defendant no. 1 gave evidence and hence defendant no. 2 entered into witness box in sequence. Defendant nos. 3 and 4 are government authority. They have not given any evidence. Then defendant no. 5 Satish Banginwar filed his affidavit of examination – in – chief

on 15.6.2019 and his cross-examination is completed on 20.6.2019. The parties gave evidence because they know that the case is now time bound.

14. The stages of raising any objection about non-entering of heirs of late Eknath and later on for partial evidence by Marotrao, are over. Knowing this defendant no. 5 completed his evidence in sequence. Defendant no. 5 and 6 are joint purchasers of the suit property. Now they have not led further evidence means they do not want to lead more evidence. But instead of completing further stages, moved present application for amendment of written statement. In view of the decision of Hon'ble Supreme Court cited supra, the application can not be allowed as the trial commenced long back and now it is almost completed.”

The learned trial Judge has further recorded that the defendant nos. 5 and 6 have not been able to wriggle out of the proviso below Rule 17 of Order 6 of the Code of Civil Procedure.

I find that the learned trial Judge has properly dealt with the matter and there is neither any illegality or irregularity or error of jurisdiction which necessitates interference by this Court in the extraordinary jurisdiction.

Hence, the writ petition is **dismissed**. No costs.

JUDGE