

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

WRIT PETITION NO.5706/2019

Smt. Jyoti w/o Ashish Wankhede Vs. Rajesh Prakash Bhandari

Office notes Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Shri S.N.Nandeshwar, Advocate for petitioner.
Shri A.A.Naik, Advocate for respondent sole.

CORAM : A.S.CHANDURKAR, J.

DATED : October 14, 2019

The challenge raised in the present writ petition is to the orders dated 23.07.2018 directing addition of the petitioner as defendant no.2 in suit for specific performance filed by the respondent herein as well as the order dated 27.02.2019 by which the trial Court has permitted the plaintiff to amend the plaint for challenging the sale deed executed in favour of the petitioner on 24.06.2013.

Shri S.N.Nandeshwar, learned counsel for the petitioner submits that the agreement on the basis of which the suit was filed by the plaintiff-respondent herein is dated 17.07.2012 and that agreement was to operate in June 2013. It is thereafter that the original defendant sold the suit property to the petitioner. Despite the fact that the suit property was purchased on 24.06.2013, an application to add the petitioner as defendant no.2 was moved by the respondent on 24.02.2016. After that application was allowed, further amendment was sought by the respondent for incorporating

the name of the defendant no.2 as well as the prayer with regard to challenge to the sale deed dated 24.06.2013. This application was moved on 24.08.2018. Hence without considering the belated applications, they have been allowed and the petitioner has been impleaded as the defendant no.2 in the suit. He submits that in view of the delay as caused, both the applications were liable to be rejected.

Shri A.A.Naik, learned counsel for the respondent supported the impugned orders and submitted that rights of the petitioner herein have been kept open by the trial Court itself when it passed the order below Exhibit 35. As per that order the question whether the amendment would relate back to the date of the suit or whether it would operate from the date of passing of the order was kept open. It is also submitted that pursuant to the show cause notice issued by the trial Court on 24.02.2016, the petitioner had filed her reply on 19.08.2016. Thus after hearing the petitioner the impugned orders came to be passed. It was thus submitted that no interference was called for.

Heard the learned counsel for the parties and perused the respective pleadings. It is seen that initially the trial Court on the application seeking addition of the defendant no.2 has issued show cause notice to the petitioner on 24.02.2016. After

considering the reply filed by her on 19.08.2016, the addition was directed. This was subject to costs of Rs.200/- on account of delay. Thereafter further amendment was permitted to enable the challenge to subsequent sale deed dated 24.06.2013. While passing that order, the rights of the party added have been sought to be protected by keeping the question of the amendment relating back to the date of the suit or otherwise open. Thus at this stage, I do not find that the trial Court committed any error in directing addition of the petitioner herein and thereafter permitting the amendment. Direction no.3 in the order passed below Exhibit 35 is sufficient to safeguard the rights of the petitioner. Hence, there is no reason to interfere in writ jurisdiction. The writ petition is therefore dismissed. No costs.

JUDGE

Andurkar.