

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

**Writ Petition No.5608 of 2018**

**(N.K. Ramdas son of V. Natesan .vs. N. Kailasan son of V. Natesan )**

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

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Mr. Yash Meheshwari, Advocate for Petitioner.  
Mr. N.H. Shams, Advocate for Respondent.

**CORAM : Manish Pitale, J.**  
**DATED : March 01, 2019.**

By this writ petition, the petitioner (original defendant) has challenged order dated 03.12.2016 passed by the Court of 2<sup>nd</sup> Joint Civil Judge, Senior Division, Nagpur (trial Court) in Special Civil Suit No. 202 of 2011, whereby an application seeking amendment of the written statement was only partly allowed.

2. The respondent (original plaintiff) had moved an application seeking amendment of the plaint, which in the first instance, was rejected by the trial Court, but on approaching this Court by filing a Writ petition No. 3499 of 2014, the application for amendment of plaint by adding prayers thereto was allowed by this Court. While allowing the respondent (original plaintiff) to amend the plaint, in the order passed on 09.12.2014 passed in Writ Petition No. 3499 of 2014, this Court had granted liberty to the petitioner (original defendant) to effect consequential amendment in the written statement, if so advised.

3. Pursuant to the amendment carried out by

the respondent in his plaint, the petitioner herein on 10.09.2015 moved an application for consequential amendment of his written statement. By this application, in addition to seeking consequential amendment of the written statement, the petitioner also sought to substitute certain sentences in paragraphs 5,11,21,23,15 and 19 of the written statement on the basis that in the original written statement there had been typographical errors which were required to be corrected. It was submitted that the typographical errors had occurred because in a companion suit, while filing written statement pertaining to the property subject matter of that suit, which was the ground floor, the same description of the property was erroneously repeated in the present written statement, instead of stating the property to be the first floor. Apart from this, the petitioner had also sought to correct errors that had occurred because of inadvertently copying the written statement in the companion suit while preparing the written statement in the present matter.

4. In the impugned order, the trial Court allowed the portion of the amendment that was consequential to the amendment of plaint but insofar as substitution of aforesaid sentences in paragraphs 5,11,21,23,15 and 19 was concerned, the trial Court rejected the same only on the ground that this Court had granted liberty to effect only amendments in the written statement consequential to the amendment of the plaint.

5. A perusal of the documents on record shows that amendment proposed on behalf of the petitioner other than those pertaining to the consequential

amendment of written statement, would also be necessary for proper decision of the real question in controversy between the parties. It appears that typographical errors and other errors had occurred in the written statement in the present case as the written statement in the companion suit appears to have been copied and filed in the present case. In such a situation, it would be in the interest of justice that application for amendment moved on behalf of the petitioner is allowed in its entirety.

6. Accordingly, the present writ petition is allowed. The impugned order passed by the trial Court is modified to the extent that the application for amendment (Exh.40) filed on behalf of the petitioner is allowed in its entirety and as a consequence, the petitioner is permitted to substitute sentences in paragraphs 5,11,21,23,15 and 19 as specified in paragraph 1 of the application (Exh.40). The amendment be carried out by the petitioner within a period of two weeks from today.

7. In the facts and circumstances of the present case, the trial Court is directed to dispose of the suit expeditiously.

**JUDGE**

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