

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

Writ Petition No.5138 of 2018

(Balakdas Haridas Mahant .vs. Shripat Bholadas Lolsurey and another)

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

Court's or Judge's orders.

Mr. A.D. Sonak, Advocate for Petitioner.

Mr. S.S. Deshpande, Advocate for Respondent No.2.

CORAM : Manish Pitale, J.

DATED : January 10, 2019.

By this writ petition, the petitioner (original plaintiff and appellant before the Courts below), has challenged order dated 19.07.2018 passed by the Court of District Judge, Nagpur (appellate Court), whereby an application seeking amendment of prayer clause of the appeal memo has been rejected.

2. The petitioner had filed a suit for declaration, perpetual cum mandatory injunction and recovery of damages against the respondents before the Court of Civil Judge, Senior Division, Nagpur (trial Court), which was partly decreed. Apart from other directions given by the trial Court, it was directed that the respondents shall pay a sum of Rs.50,000/- to the petitioner within three months towards damages.

3. Aggrieved by the said judgment and decree, the petitioner as well as the respondents filed appeals before the appellate Court. In the appeal filed by the petitioner bearing Civil Appeal No.356 of 2011, the

prayer clause reads as follows:-

"i) Call the record and proceedings of Special Civil Suit No.642 of 2001;

(ii) Quash and set aside the judgment and decree dated 13/04/2011 to the extent of grant of Rs.50,000/- towards the damages;

(iii) Grant any other relief deem fit and proper in the light of the facts of the case."

4. Thereafter, when the appeal was to be taken up for arguments, an application was filed on behalf of the petitioner seeking amendment of the prayer clause to the appeal memo and the proposed amendment was as follows:-

"And grant compensation of Rs.1,59,000/- in favor of the appellant and against the Respondents for construction of the suit house by the appellant."

5. It was contended in the said application that due to *bona fide* mistake, the said proposed prayer could not be added.

6. This application was opposed on behalf of the respondents.

7. By the impugned order dated 19.07.2018, the appellate Court rejected the application for amendment and the proposed amendment in the prayer clause on the grounds that the application had been filed after long pendency of the appeal and that the petitioner had not been diligent in preferring the said application.

8. A perusal of the judgment and decree passed by the trial Court shows that a specific direction was given to the respondents to pay damages to the petitioner to the tune of Rs.50,000/-. The petitioner obviously challenged the said judgment and order to the extent of grant of quantum of damages that were less than what was prayed by him as a plaintiff before the trial Court. In such a situation, prayer clause (ii) in the appeal memo was obviously defective because it sought quashing and setting aside of the judgment and decree of the trial Court to the extent of grant of Rs.50,000/- towards damages. The petitioner was dissatisfied with the grant of quantum of compensation of Rs.50,000/- and that impelled the petitioner to approach the appellate Court by filing the aforesaid appeal. A perusal of the appeal memo shows that specific grounds have been raised on behalf of the petitioner stating that the amount towards damages to the extent of Rs.50,000/- was too meager. Therefore, it becomes evident that due to inadvertent mistake the prayer clause was defectively framed in the appeal filed on behalf of the petitioner and that the said prayer clause was contrary to the specific grounds raised in the said appeal memo itself. In this situation, upon realising the mistake, the application for amendment was moved proposing addition of prayer for grant of compensation to the tune of Rs.1,59,000/- in favour of the petitioner.

9. In the peculiar facts of the present case, it becomes obvious that if the application for amendment

moved by the petitioner is not allowed, it would deprive the petitioner to effectively pursue the appeal filed by him before the appellate Court. It was necessary in the interest of justice for the appellate Court to have taken into consideration this aspect of the matter and to have allowed the amendment proposed on behalf of the petitioner.

10. By not doing so, the appellate Court obviously lost sight of the aforesaid aspect of the matter and, therefore, it is necessary that this writ petition be allowed. Accordingly, this writ petition is allowed and the impugned order dated 19.07.2018 passed by the Appellate Court is quashed and set aside. The application for amendment filed on behalf of the petitioner before the Appellate Court is allowed. The petitioner is permitted to carry out the amendment within a period of two weeks from today.

11. The Appellate Court shall make an endeavour to decide the appeals filed by both the parties expeditiously.

JUDGE