

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

WRIT PETITION NO. 6097 OF 2017

- 1] Tarachand S/o Shalik Bhoyar,
aged about- 41 years, Occ.- Cultivator
R/o Village Valani, Tq. Saoner,
Distt. Nagpur
- 2] Shantabai Wd/o Madhu Bhoyar,
aged about – 58 years
- 3] Munna S/o Madhu Bhoyar
aged about 28 years,
- 4] Shilpa D/o Madhu Bhoyar,
aged about 27 years,

All 2 to 4 are R/o C/o House of Bapurao Laxman Kamble,
Pimpri Basti, Tq. Kamptee, Distt. Nagpur.

.... **PETITIONERS**

// VERSUS //

- 1] Vijay S/o Madhaorao Chikte,
aged about Major, Occ.- Agriculturist
R/o Anmol Nagar, Wathoda, Ring Road,
Distt. Nagpur
 - 2] Smt. Ashabai Madanrao Ghatole,
aged about – 62 years, Occ.- Household
 - 3] Prashant Madanrao Ghatole,
aged about 34 years, Occ.- Business,
 - 4] Ritesh Madanrao Ghatole,
aged about 32 years, Occ.- Business,
- All 2 to 4 all R/o Juni Mangalwari, Gujri Chowk,
Telipura, Nagpur – 08

- 5] Laxman Marotrao Kamble,
aged about 49 years, Occ.- Agriculturist,
 - 6] Suryabhan Marotrao Kamble,
aged about 39 years, Occ.- Agriculturist,
 - 7] Bhaurao S/o Marotrao Kamble,
aged about 37 years, Occ.- Agriculturist
 - 8] Deorao S/o Marotrao Kamble,
aged about 34 years, Occ.- Agriculturist
 - 9] Smt. Sulochanabai W/o Shriram Meshram,
aged about Major, Occ.- Agriculturist
- All 5 to 9 are R/o Village Parsodi, Tq. Kamptee, Distt. Nagpur.
- 10] Vijay S/o Dokwaduji Katore,
aged about 35 years, Occ.- Business,
R/o Timki, Khatikpura, Nagpur.

.... **RESPONDENTS**

Shri M. Rajkondawar Adv. for the petitioners.
Shri A.S. Kulkarni, Adv for the respondent Nos. 1 to 4.
Shri V.A. Dhabe, Adv. for the respondent Nos. 5 to 9.
Shri S.A. Radke, Adv. for the respondent No. 10.

CORAM : Z.A.HAQ, J.

DATED : 2nd August, 2019

ORAL JUDGMENT :

Heard.

2] **RULE.** Rule made returnable forthwith.

3] The respondent Nos. 1 to 4 have filed the civil suit praying for decree for specific performance of agreement, and other reliefs. After the

issues came to be framed, at the stage when the civil suit was fixed for recording of evidence of plaintiff's witness, the defendant Nos. 7 to 9 and 11 filed the application (Exhibit 111) seeking permission to amend the written statement. This application (Exhibit 111) is dismissed by the impugned order. The learned trial Judge has recorded that the application (Exhibit 111) is filed after commencement of the trial and the defendant Nos. 7 to 9 and 11 have not given any explanation to show that in spite of exercise of due diligence, they were not able to bring the facts on record earlier.

4] Learned Advocates representing the parties are not sure whether the trial had commenced or not, when the application (Exhibit 111) was filed. According to the Advocate appearing for the petitioner, the trial had not commenced and the affidavit in lieu of examination-in-chief of plaintiff/witness was not filed when the application (Exhibit 111) was filed.

According to the Advocate appearing for the respondent Nos. 1 to 4 (Plaintiffs), the affidavit in lieu of examination-in-chief of witness No. 1 on behalf of the plaintiff was filed. But the Advocates have made statement that the cross-examination of witness No. 1 of plaintiff had not started, when the application (Exhibit 111) was filed.

5] After going through the proposed amendment, I find that the facts which the defendant Nos. 7 to 9 and 11 seek to bring on record by the proposed amendment are relevant for deciding the controversy in issue.

I find that the defendant Nos. 7 to 9 and 11 have also given explanation pointing out why the facts proposed by the amendment could not be brought on record earlier. In my view, even if affidavit in lieu of examination-in-chief of witness No. 1 on behalf of the plaintiff was filed when the application (Exhibit 111) was filed, the defendant Nos. 7 to 9 and 11 should be permitted to incorporate the proposed amendment. The learned trial Judge has failed to exercise the jurisdiction vested in him by order VI Rule 17 of the Code of Civil Procedure judiciously.

6] Hence, the following order :

- (i) The impugned order is set aside.
- (ii) The application (Exhibit 111) filed by the defendant Nos. 7 to 9 and 11 is allowed and they are permitted to incorporate the proposed amendment in the written statement.

Rule is made absolute accordingly. In the circumstances, the parties to bear their own costs.

As the civil suit is of 2016, the trial Court is directed to decide the civil suit till 15.04.2020.

JUDGE

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