

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

WRIT PETITION NO. 5330 OF 2016

Farida Bano w/o Jafarullah Khan

vs.

Mohammed Zakir Mohd. Jabbar

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

Court's or Judge's orders

Shri. J. J. Chandurkar, counsel for petitioner.
Shri. C.A. Babrekar, counsel for respondent.

CORAM : MANISH PITALE J

DATED : 26/11/2019

At the outset permission is granted to the learned counsel for the petitioner to correct the name of the respondent in the cause title. Amendment be carried out forthwith.

2. By this writ petition, the petitioner (original plaintiff) has challenged order dated 23/08/2016 passed by the Court of Civil Judge Senior Division, Daryapur (Trial Court), whereby application for amendment of plaint filed on behalf of the petitioner, pursuant to remand of the matter by the Appellate Court, has been only partly allowed. According to the petitioner, the application for amendment ought to have been allowed in its entirety in the interest of justice.

3. A perusal of the application for amendment of plaint would show that the petitioner sought to add

paragraphs 3-A to 3-I to the plaint. By the impugned order, the Trial Court has partly allowed the application for amendment to the extent of adding paragraphs 3-B and 3-I only and rest of the amendment sought in the application in paragraphs 3A and 3-C to 3-H has been declined. The reason why the amendment insofar as paragraphs other than 3-B and 3-I need not be granted is found in paragraph 3 of the impugned order. It appears that the Trial Court was of the opinion that material was already available on record to assist the petitioner in order to raise contentions that were sought to be raised in such paragraphs by way of amendment. On this basis, the Trial Court come to the conclusion that amendment to the extent of paragraphs 3-A , 3-C to 3-H ought not to be allowed. But, a perusal of the application for amendment and the material on record indicates that even if certain pleadings are sought to be added by way of abundant caution, such amendment ought to have been permitted in the interest of justice and for determining the real question in controversy.

4. The respondent has not been able to demonstrate what prejudice he would suffer, if the amendment was allowed in its entirety.

5. In view of the above, the writ petition is allowed. The impugned order limiting the permission to amend the plaint only to the extent of paragraph 3-B and 3-I, is set aside and the application for amendment filed by the petitioner (Exh.222) is allowed in its entirety. The amendment be

carried out by the petitioner within a period of **four weeks** from today. Upon such amendment being carried out, the respondent is permitted to carry out consequential amendment within a period of **four weeks** thereafter.

6. Writ Petition is disposed of in above terms.

JUDGE

KOLHE/P.A.