

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

WRIT PETITION NO. 6242/2019

Saraswatibai Wd/o Maroti Thakre & anr.

..VS..

Babarao C. Thakre

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

Court's or Judge's orders

Shri K.V. Bhoskar, Advocate for the petitioner(s)

CORAM : Z.A.HAQ, J.

DATED : 13/09/2019

Heard.

By the impugned order, the trial Court has dismissed the application (Exh. 15) filed by the defendant nos. 1 & 2 under Order 6 Rule 17 of the Code of Civil Procedure, seeking permission to amend the written statement. The learned trial Judge has recorded that the proposed amendment is vague and such amendment cannot be permitted.

At the time of hearing, the learned advocate for the petitioners has not been able to point out that the observations made by the learned trial Judge are not correct. Realizing the difficulty, the learned advocate for the petitioners sought permission to withdraw the application (Exh. 15) with liberty to file fresh / proper application.

On instructions, it is submitted that to compensate the respondent – plaintiff for the delay caused, the petitioners will pay costs of Rs. 10,000/-. It is further

pointed out from the written statement filed by the petitioners before the trial Court that they are not disputing that the plaintiff is in possession of the suit property.

In the above facts, I find that no prejudice would be caused to the plaintiff if the defendants are granted an opportunity to file fresh application seeking amendment as proposed by the application (Exh. 15).

Hence, the following order is passed:-

a) The application (Exh. 15) filed by the petitioners – defendant nos. 1 and 2 is **disposed** as withdrawn. Consequently, the impugned order does not survive.

b) The petitioners – defendant nos. 1 and 2 are permitted to file fresh application seeking amendment of the written statement.

Such application shall be considered on merits by the learned trial Judge provided it is filed within two months from today.

c) If the defendant nos. 1 and 2 fail to file application within two months from today, the learned trial Judge shall not consider the amendment application and shall proceed further in the matter according to law.

This order is passed accepting the submission made on behalf of the petitioners – defendant nos. 1 and 2 that they will pay costs of Rs. 10,000/- to the respondent – plaintiff.

The amount of costs shall be paid by the petitioners – defendant nos. 1 and 2 to the respondent – plaintiff within two months from today.

The writ petition is **disposed** in the above terms.

JUDGE

Ansari