

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

WRIT PETITION NO.7020 OF 2017

Ashok Leelaram Arora, Akola

-vs-

Ramdas Shriram Kambe (dead) Thr. L.Rs. Maltibai wd/o Ramdas Kambe and ors.

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

Court's or Judge's Orders.

Shri S. J. Kadu, Advocate for petitioner.

Shri R. D. Karode, Advocate for respondent No.2.

CORAM : A.S.CHANDURKAR, J.

DATE : April 10, 2019

P.C.

Rule. Heard finally with consent of learned counsel for the parties.

2. The petitioner who is the original plaintiff is aggrieved by the rejection of the application for amendment sought to be made in the plaint.

3. The petitioner has filed a suit for specific performance of agreement dated 08/05/1991. Other ancillary reliefs have also been sought in the suit. The defendant filed his written statement and denied the claim as made. The plaintiff filed his affidavit-in-lieu of evidence and thereafter moved the application below Exhibit-26 seeking permission to amend the plaint. The amendment was with regard to adjudication of a writ petition and an order passed in a contempt petition before this Court. The trial Court has rejected the said application on the ground that as the trial had commenced and there

was no explanation for not moving the application at an earlier point of time, it was liable to be rejected.

4. After hearing the learned counsel for the parties it is seen that the proposed amendment merely makes a reference to the adjudication of a writ petition and pendency of the contempt petition in which the defendant was a party. The plaintiff was not a party therein. Considering the nature of amendment as proposed, it is seen that the said factual aspect involving the defendant can be taken into consideration while adjudicating the suit. The legal heirs of the original defendant can always raise consequential pleadings in case they intend to clarify their position. Since the amendment as proposed does not change the nature of the proceedings and according to the plaintiff he got knowledge about the same after filing his affidavit on record, the application is liable to be allowed.

5. Accordingly the order passed below Exhibit-26 dated 18/10/2016 is set aside. The amendment is allowed. The defendants are at liberty to consequentially amend their pleadings for opposing the amended portion.

6. The writ petition is accordingly allowed with no order as to costs.

JUDGE