

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

WRIT PETITION NO.6405 OF 2018

Satish s/o Ramkrishnarao Dhabekar.

Vs.

Smt. Pushpalata w/o Gulabrao Makode.

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

Court's or Judge's orders

Mr. R. T. Anthony, Advocate for petitioner.
Mr. J. M. Shamkuwar, Advocate for respondent.

CORAM : AVINASH G. GHAROTE, J.

DATE : MARCH 05, 2020.

I have heard Mr. Anthony, learned counsel for the petitioner and Mr. J. M. Shamkuwar, learned counsel for the respondent.

The present petition challenges the order dated 12.07.2018 passed by the Trial Court whereby the application for amendment of the written statement has been allowed by the learned Trial Court.

Mr. Anthony, learned counsel for the petitioner contends that the matter is at the stage of evidence, in as much as, the affidavit in lieu of oral evidence of the plaintiff was filed and the further chief was recorded at which stage the application for amendment came to be filed. He submits that there is lack of due diligence.

Mr. Shamkuwar, learned counsel for the respondent submits that the suit for specific performance was filed by the plaintiffs, in which, a plea of exemplary hardship

was sought to be raised by the proposed amendment in as much as, the defendant did not have any other property for resident except the suit property.

It is trite that the question of amendment to the written statement, has to be viewed, in light of the position, that contrary and inconsistent pleas are permissible to be raised in the written statement. The plea of hardship is one, which, in fact is in consonance with the defence as is permissible to be raised in a suit for specific performance. The burden of proving any plea permitted to be placed in the written statement by way of amendment would be that of the defendant, and would not cause any prejudice to the petitioner, except for some delay. The impugned order, therefore does not suffer from any infirmity. The petition, therefore, is devoid of any merit and accordingly is dismissed. No order as to costs.

Considering that the suit is of the year 2009, the Trial Court is directed to decide the suit expeditiously and if possible within a period of one year from today.

JUDGE