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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 4562 OF 2021

SURESH RAJARAM PATIL

....PETITIONER

V/s.

**GULSHAN NANA KATKARI
@ WAGHE AND ORS**

.....RESPONDENTS

Mr. Ashok T. Gade a/w Riya John for the petitioner

CORAM : NITIN W. SAMBRE, J.

DATE: AUGUST 25, 2021.

P.C.:

1] Heard learned counsel for the petitioner-defendant. According to him, petitioner by way of afterthought moved an amendment application after prayer for temporary injunction was rejected, whereby nature of claim has entirely changed. By drawing support from the Judgment of this Court in the matter of **Archana Ashok Amburle Vs. Arpana Shankar Dudham** [(2019) 3 ALLMR 768], he would claim that it is open for the plaintiff to file a separate suit for the cause which is relied seeking amendment to the plaint.

2] I have perused the impugned judgment.

3] Trial in the suit is yet to commence i.e. the suit is at the stage of filing additional written statement.

4] Apart from above, judgment cited in the case of **Archana Ashok Amburle** [cited supra] will be of hardly any support as the court has dealt with in the eventuality wherein the trial has already begun which is not the case in the present case.

5] In the facts and circumstances, the only modification which in my opinion warrants in the order impugned is, plaintiff shall pay cost of Rs. 2000/- to the petitioner-defendant. Plaintiff shall deposit such cost within period of 4 weeks from the date of production of this order before the Trial Court. If such cost is deposited within time mentioned above, petitioner will be entitled to withdraw the same.

6] Petition stands disposed of in the above terms.

7] Liberty to move the Court below for expeditious disposal of the
Suit.

[NITIN W. SAMBRE, J.]