

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

WRIT PETITION NO. 1562 OF 2021

Ashok s/o Namdeo Kinekar

Vs.

Sau. Sunita w/o Meghraj Vaidya and another

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

Court's or Judge's orders.

Shri R.R. Vyas a/w Shri Sumit Kadam, Advocates for petitioner.

CORAM : V.M. DESHPANDE, J.

DATE : 6th APRIL, 2021.

Hearing was conducted through video conferencing and the learned counsel agreed that the audio and visual quality was proper.

(2) Heard Shri R.R. Vyas along with Shri Sumit Kadam, learned counsel for the petitioner.

(3) The present writ petition is filed by the original defendant whose application (Exhibit 142) under Order VI Rule 17 of the Code of Civil Procedure (CPC) for amendment in written statement is rejected on 15.01.2021 by the learned Joint Civil Judge, Junior Division, Chamorshi, District Gadchiroli.

(4) The suit was filed for removal of encroachment in the year 2014. Learned counsel for the petitioner submitted that written statement was filed in the year 2014 itself. He

submitted that an application for amendment was required to be filed in the year 2019 because when the petitioner changed his advocate and entrusted the brief to another advocate. The said another advocate found that in the plaint the boundaries of the property are not properly mentioned, therefore the petitioner/defendant moved an application under Order VI Rule 17 of the CPC, which according to the counsel for the petitioner, clarificatory in the nature.

(5) It is an admitted position that for five years no steps were taken by the petitioner for giving any clarification. The application is moved only after the suit was fixed for final arguments after recording the evidence of the parties. In view of the said application under Order VI Rule 17 does not show that there was any due diligence on the part of the petitioner/defendant.

(6) In that view of the matter, the law laid down by Hon'ble Apex Court in Vidyabai and others Vs. Padmalatha and Another reported in AIR 2009 SC 1433 is applicable with its full force. Consequently, there is no merit in this writ petition. The writ petition is dismissed. No order as to costs.

JUDGE

Wagh