

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

WRIT PETITION NO. 8031 OF 2019

PETITIONER: Jayprakash Jugalkishor Taori,
aged : 39, Occ. Business,
R/o. Motala, Tq. Motala, Dist. Buldhana

...VERSUS...

RESPONDENT: Jugalkishor Dinanath Zawar,
aged : 56, Occ. Business,
R/o. Motala, Tq. Motala, Dist. Buldhana

Mr. P.S.Khubalkar, Advocate Petitioner.
Mr. P.S.Kshirsagar, Advocate for respondent

CORAM : AVINASH G. GHAROTE, J.
DATE : 08/03/2021.

1] Rule. Rule made returnable forthwith. Heard finally by consent of the learned counsel appearing for the parties.

2] An application for amendment of written statement came to be filed by the defendant, to incorporate the details of the expenses of construction and rent in respect of the suit property, of which a partition was claimed. The plaint seeks a relief of rendition of true and correct account of the income, rent, deposits and benefits received by the defendant from the suit property and claims

half share in that. By way of the amendment, the details as regard the expenses made are sought to be brought on record.

3] Though Mr. Kshirsagar, learned counsel for the plaintiff/respondent submits that the application for amendment of written statement was filed after the examination-in-chief of the plaintiff came to be recorded on 6.2.2019 and therefore, the trial in that sense had commenced, however, a distinction has always been drawn between the application for amendment of the plaint and that of written statement. Moreover, the amendment is in the nature of clarification vis-a-vis the relief claim in prayer clause (b) of the plaint and in fact, goes to the root of the matter and is necessary for deciding the rights of the parties in the suit.

4] In view of this position, any inconvenience caused to the petitioner can always be compensated. It is trite that amendment, which is necessary to decide the basic controversy between the parties, which should always be decided on merits, needs to be considered, on the rigor of the proviso to Order 6, Rule 17 of Code of Civil Procedure, however, in a given

case, the Court is competent to consider an amendment though belated, if it subserves the interest of justice and promotes the decision of the matter on merit.

5] In that view of the matter, the writ petition is allowed. The impugned order dated 18.09.2019 passed by the Civil Judge, Senior Division, Malkapur, is hereby quashed and set aside. The application for amendment, as filed by the defendant at Exh.55, is hereby allowed, subject to the costs of Rs.5000/- to be paid to the plaintiff before the amendment is carried out.

6] The trial court is also requested to decide the suit as expeditiously as possible, preferably within a period of one year from the date of the order. It is made clear that if any additional evidence is required to be tendered by the plaintiff, in view of this order, it will be permissible to do so.

7] Rule accordingly.

JUDGE