

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

WRIT PETITION NO.8334/2019

Shri Radheshyam @ Radhakishan Agrawal (since deceased) through his Legal
Representatives Smt. Vidyadevi wd/o Radheshyam Agrawal and others

...Versus...

Virendra s/o Bhagwatiprasad Agrawal and another

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

Court's or Judge's orders

Shri V.R. Mundra, Advocate for petitioners

Shri M.R. Joharapurkar, Advocate for respondents

CORAM : AVINASH G. GHAROTE, J.

DATE : 06/09/2021

1. Heard Shri Mundra, learned Counsel for the petitioners and Shri Joharapurkar, learned Counsel for the respondents.

2. The order dated 04/12/2019, passed by the learned Principal District Judge, Gondia, below Exh.17 on an application for amendment of the plaint in Regular Civil Appeal No.83/2015, rejecting the said application, is the subject matter of challenge in this petition.

3. Shri Mundra, learned Counsel for the petitioners submits that the application though filed at the appellate stage, would not be covered by the proviso to Order VI Rule

6 of the Code of Civil Procedure, as they were not invoked at all, as the application is filed under Section 22 of the Specific Relief Act r/w Section 151 of the Code of Civil Procedure, which permits seeking of relief of possession at any stage. He submits that since the agreement in question was on 'as is where is basis', in view of the fact that the property in question was occupied by a licensee, possession was not sought before the Trial Court, which granted a decree for specific performance, directing the owner to execute and register the sale-deed in favour of the plaintiff/petitioner. It is in appeal that for the first time, the respondent by filing an application for amendment of written statement, raised a plea that in Special Civil Suit No.24/2004, a decree for eviction was passed against the licensee, who has since delivered possession of the suit property to the respondent-owner. Such an amendment came to be allowed by the learned Lower Court by an order dated 12/07/2019 and it is in pursuance to this that the application under Section 22 of the Specific Relief Act came to be filed, which has been rejected.

4. Shri Joharapurkar, learned Counsel for respondents does not context the legal position, as emanating from the provisions of Section 22 of the Specific Relief Act. He, however, submits that all pleas, which may be permissible to be raised regarding opposing a claim for

possession by the petitioner/plaintiff, be kept open.

5. It is trite that in view of Section 22 of the Specific Relief Act, a claim for possession by the plaintiff can be entertained at any time, notwithstanding anything to the contrary, as contained in the Code of Civil Procedure, which would indicate that the rigor of the proviso to Order VI Rule 17 of the Code of Civil Procedure would not be attracted and the factum of possession having been brought on record by the defendant by an amendment to the written statement, which came to be allowed on 12/07/2019 in the appeal, the application under Section 22 of the Specific Relief Act ought to have been allowed by the learned Lower Court. The impugned order, therefore, is hereby quashed and set aside and the application at Exh.17 is allowed. It is, however, made clear that all questions/defences/pleas, which are permissible in law to be raised by the respondent-owner, for opposing the grant of relief of possession, are kept open and shall be permissible to be so raised.

6. The writ petition is accordingly allowed in the aforesaid terms. There shall be no order as to costs.

(AVINASH G. GHAROTE, J.)