

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.10742 OF 2022

Nitin Sumatilal Sanghvi

Age : 47 years, Occu : Business

R/o. Plot No.31, LIC Colony,

Jamnagiri Road, Dhule

.. Petitioner

Versus

1. Dnyandev Gangaram Wadar (Kusalkar)

Age : 50 years, Occu : Agriculturist

R/o. Gundegaon, Tal. & Dist. Ahmednagar

2. Sunanda Bapurao Patil

Age : 50 years, Occu : Agril,

R/o. CTS No.3554-C, Plot No.2,

Near Siddhivinayak Hospital,

Sakri Road, Dhule.

.. Respondents

...

Mr. Mohit S. Shah, advocate for the petitioner

Ms. Suvarna M. Zaware, Advocate for Respondent Nos.1 & 2

...

CORAM : SANDEEP V. MARNE, J.

DATE : 14-10-2022

PER COURT :

. Heard. Rule. It is made returnable forthwith. The learned Counsel Ms. Suvarna M. Zaware waives service on behalf of respondent nos.1 and 2. At the joint request of the learned counsel for the parties, the matter is heard finally at the stage of admission.

2. The petitioner is a plaintiff in the suit. His application

for amendment of plaint is rejected by the order dated 20.08.2022 passed by 5th Jt. Civil Judge, Senior Division, Dhule.

3. The suit is for specific performance. The issues have been framed and one of the issues is, whether the plaintiff is entitled to alternative relief for refund of the earnest amount and damages. The plaintiff claims that during pendency of the suit he has come across government resolution under which the defendants were possibly not entitled to receive the land which has been agreed to be sold to the plaintiff. The amendment is therefore sought to be introduced in support of the alternate relief for refund of earnest money in the event of the Court coming to a conclusion that the agreement is incapable of the specifically performed. In my opinion, the amendment is necessary to determine the real question of controversy between the parties at least with regard to the alternate prayer for refund of earnest money. The trial Court has erroneously rejected the plaintiff's application for amendment.

4. The trial Court has recorded that the trial has commenced and that the suit was kept for dismissal when the application was filed.

5. My attention is invited to the case status in which the suit is being shown to be listed on 15.10.2022 for 'evidence'. Mr. Mohit S. Shah, learned counsel for the petitioner submits that the petitioner is yet to file his affidavit of evidence. Therefore, it cannot be said that the trial has commenced or progressed substantially.

6. The petition therefore succeeds. The order dated 20.08.2022 passed by the 5th Jt. Civil Judge, Senior Division, Dhule is set aside. The petitioner's application for amendment at Exh.35 in Special Civil Suit No.25 of 2020 stands allowed.

7. Needless to say that the defendants will have an opportunity to file additional written statement to the amended plaint.

8. Writ petition is accordingly allowed. Rule is made absolute.

(SANDEEP V. MARNE, J.)