

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

WRIT PETITION NO. 564 OF 2018

Chaitram S/o Govinda Shende

-- Petitioner

Vs.

Rukhmabai Wd/o Charandas Ramteke and
another

-- Respondents

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

Court's or Judge's orders

Mr. N.A. Vyawahare, Advocate for Petitioner
Ms. Smita B. Dhote, Advocate h/f Mr. V.G. Bhamburkar,
Advocate for Respondent Nos.1 and 2

CORAM : MANISH PITALE, J.

DATE : 01st JULY, 2022

By this petition, the petitioner has challenged order dated 24/01/2018, passed by the District Judge-1, Nagpur (hereinafter referred to as District Court), whereby application filed on behalf of the petitioner i.e. respondent in the appeal before the District Court for amendment of written statement has been rejected.

2. This petition was listed on a number of occasions when the learned counsel for the parties were heard. It was lastly heard on 27/06/2022. Mr. Vyawahare, the learned counsel for the petitioner argued for the petitioner and Mr. Bhamburkar, learned counsel submitted that he would make submissions on

behalf of the respondents on the next date. The petition was, therefore, directed to be listed today i.e. on 01/07/2022 at 02:30 P.M.

3. The petition was indeed called out for hearing at 2:30 P.M. when Mr. Vyawahare, learned counsel was present. He reiterated the submissions already made on 27/06/2022 and submitted that he had nothing more to add. Mr. V.G. Bhamburkar, learned counsel remained absent, despite the fact that the petition was kept today at 2:30 P.M. specifically for his arguments. Yet, this Court kept this petition at the end of board today to grant further opportunity to Mr. Bhamburkar, learned counsel to appear and address this Court. When the petition was called out for hearing at the end of board, Mr. Bhamburkar remained absent and instead a request was made on his behalf for further adjournment. This Court adjourned the hearing of this petition on various occasions at the request of Shri Bhamburkar to afford him opportunity to address this Court, but, he has chosen not to appear. This Court is proceeding to decide this petition on merits.

4. A perusal of the impugned order shows that application at Exh.28 filed on behalf of the petitioner has been rejected. The brief facts leading up to filing of the said application are that, the respondents herein i.e. original plaintiffs had filed a suit for possession and damages against the petitioner, wherein the petitioner filed a counter claim. By judgment and order

dated 26/08/2004, the Court of 8th Joint Civil Judge, Junior Division, Nagpur (Trial Court), dismissed the suit as well as the counter claim. The relief of possession and other reliefs sought by the original plaintiffs i.e. the respondents were also rejected. The respondents then filed appeal before the District Court, challenging the said judgment and decree of the Trial Court. It is at this stage that the respondent in the appeal i.e. the petitioner before this Court, moved the aforesaid application at Exh.28, seeking amendment of the written statement on the basis of subsequent events that had taken place, which according to the petitioner rendered the suit itself infructuous. On this basis, a paragraph by way of amendment was sought to be added in the pleadings, which according to the petitioner had a material bearing on the dispute between the parties.

5. In this context, the learned counsel appearing for the petitioner invited attention of this Court to the document on which the respondents themselves had placed reliance i.e. the registered document on the basis of which the respondents claimed interest in the suit property. The said document shows that what was sold to the respondents was only a hut or *Zopadi*, being a temporary structure and not the piece of land on which the structure existed. The record shows that the Trial Court, while dismissing the suit filed by the respondents, found that no case for grant of possession or damages was made out by the respondents.

6. The petitioner by way of amendment of written statement sought to bring on record the fact that during pendency of the appeal, the hut / *Zopadi* i.e. a temporary structure itself had collapsed. According to the petitioner, this had a material bearing on the reliefs sought by the respondents.

7. In the reply filed to the said application, the respondents denied the aforesaid fact and opposed the proposed amendment.

8. This Court has considered the material on record and it is found that the subsequent event, being a fact disputed by the parties, would necessarily require amendment of the pleadings and if necessary evidence to be led by the parties, which is necessarily concerned with the relief that was originally sought by the respondents in their suit. It is for the District Court to then decide that after granting opportunity of amending the pleadings, as to in what manner evidence could be permitted to be placed on record for a holistic adjudication of the dispute pending before the District Court.

9. In the facts and circumstances of the present case, the District Court ought to have allowed the application at Exh.28, particularly when the respondents herein were disputing the fact sought to be placed on record by way of amendment by the petitioner.

10. In view of the above, it is found that the District Court committed an error in rejecting the application filed at Exh.28. Accordingly, the writ petition is allowed. The impugned order is quashed and set aside. The application at Exh.28 is allowed in terms of prayer made therein. The petitioner is permitted to amend the written statement as prayed in the said application, within a period of three weeks from today.

11. To avoid any further delay as regards the amendment of pleadings, since the respondents have disputed the facts sought to be placed on record by way of amendment, the respondents are granted permission to consequentially amend their pleadings within three weeks of the amendment to be carried out by the petitioner in terms of this order. Upon the amendments being carried out in the pleadings, the District Court to proceed in accordance with law, including grant of opportunity to the parties to lead evidence, if they so desire, in the light of the amendment of the pleadings.

12. The writ petition is disposed of.

JUDGE