

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

WRIT PETITION NO.5692 OF 2021

(Santosh s/o Dinkarrao Deshmukh and others Vs. Mahavirprasad @ Dinesh s/o
Shriniwas Agrawal and others)

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

Court's or Judge's orders.

Mr. D. I. Jain, Advocate for Petitioners.
Mr. S. M. Ukey, Addl. GP for Respondents 2 & 3/State.
Mr. A. C. Dharmadhikari, Advocate for Respondent 4.

CORAM: ROHIT B. DEO, J.

DATE: 3rd MARCH, 2022.

Heard.

2. The petitioners are the plaintiffs in Regular Civil Suit 32/2007 for declaration and permanent injunction on the premise that even as tenants, the plaintiffs are entitled to protect the possession till dispossessed in accordance with law.

3. The defendant 4 – landlord preferred an application Exhibit-55 seeking amendment of the written statement, which is allowed by the learned trial Judge vide order dated 16.01.2020, which is impugned herein.

4. It is not in dispute that the trial is yet to commence, and the order impugned will have to be scrutinized from the said perspective.

5. The learned trial Judge has observed that in view of the subsequent events which have a bearing on the outcome of the case, paragraphs 24 to 26 deserve to be

incorporated and additional averments deserve to be incorporated in paragraph 11. However, the learned trial Judge did not permit the defendant 4 to introduce paragraphs 27 to 30 as regards the counter claim on the premise that the counter claim is not drafted in appropriate form.

6. While the order of the learned trial Judge is quite cryptic, I have perused the proposed amendment, and having done so, I see no reason why the amendment should not be allowed, particularly since the trial has not commenced.

7. It is well settled that the Court must be relatively liberal while considering the amendment to written statement, particularly if the trial is yet to commence. It is not that any admission is proposed to be withdrawn nor is a totally new or mutually exclusive case set up. The averments which are incorporated in paragraph 11 make a reference to the various revenue proceedings. Similarly paragraphs 24, 25 and 26 pertain to the implication of the order passed by the Tahsildar under the Maharashtra Land Revenue Code as per the direction issued by the Court.

8. I see no reason to interfere in writ jurisdiction. The petition is dismissed.

JUDGE