

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

WRIT PETITION NO. 2141 OF 2018

M/S. 4 Walls Developers, A
partnership Firm, through its
partner, Shri Sanjay s/o
Manoharrao Bhoot, aged about 52
years, Occ. : Business, r/o Shri
Mangal Apartments, Plot No.121/1,
Gorepeth, Nagpur.

.... **PETITIONER**

// VERSUS //

1. Shri Maganlal s/o Dadumal Paigwar,
since deceased through his legal
heirs 1-A to 1-G
- 1-A Smt. Laxmidevi wd/o Maganlal
Paigwar, aged about 71 yrs,
Occupation : Household, R/o G-11,
Shri Mangal Apartments, Plot No. G-
121/1, Gorepeth, Nagpur. (Ori.
Plaintiff no.2)
- 1-B Darshna Shivraj Khamele, aged
about 55 yrs. Occupation :
Housewife, R/o. 132, Khamele
Market, City Post Office Road, Itwari
Nagpur – 440 002
- 1-C Shushmita Jaiprakash Naidu, Aged
about 52 yrs. Occupation :
Housewife, R/o 136, Govind
Bhawan, Shitla Mata Mandir Lane,
Gokulpeth, Nagpur – 440 010
- 1-D Ashwin Maganlal Paigwar, Aged 48
yrs, Occupation : Service, r/o Parvati
Apartment, Ambazari Layout,
Nagpur – 440 033
- 1-E. Shweta Sandip Durugkar, Aged

about 40 yrs, Occupation : Private
R/o 273, Vrundava Apartment,
Laxmi Nagar, Nagpur.

- 1-F. Anurag Maganlal Paigwar, Aged
about 36 yrs, Occupation : Private,
- 1-G. Ashish Maganlal Paigwar, Aged
about 34 yrs, Occupation : Private,
Nos. 1-F & 1-G R/o Plot No.121/1,
Shri Mangal Apartment, Flat No.G-
11, Gorepeth, Nagpur.
2. Smt. Laxmidevi w/o Maganlal
Paigwar, Aged about 71 yrs,
Occupation : household, r/o G-11,
Shri Mangal Apartments, Pot No. G-
121, Gorepeth, Nagpur
3. Shri Baburao s/o Narayanrao Moon,
Aged about 77 yrs, occupation :
Retired, R/o G-6, Shri Mangal
Apartments, Plot No. G-121/1,
Gorepeth, Nagpur.
4. Smt. Sudesh w/o Sushilkumar
Handa, Aged about 67 yrs,
Occupation : Household, R/o. G-5,
Shri Mangal Apartments, Plot No.G-
121/1, Gorepeth, Nagpur.
5. Shri Prakash s/o Deepchand
Shravagi, Aged about 67 yrs,
Occupation : Retired, R/o G-3, Shri
Mangal Apartment, Plot No.G-
121/1, Gorepeth, Nagpur.
6. Shri Sunil s/o Devidas Samdekar,
Aged about 54 yrs, Occupation :
Business, R/o 015, Plot No.G-121/1,
Shri Mangal Apartment, Gorepeth,
Nagpur.
7. Shri Ashokkumar Banwarilal
Agrawal, Aged about 62 years,
Occupation : Business, Resident of
Sharda Nagar, Cement Road, 31,
Shivaji Nagar, Nagpur. (Amendment

carried out as per courts order dated
03/08/2018.

.... RESPONDENTS

Shri C.J. Dhruv, Advocate for the petitioner.
Advocate Ramnik Kaur Dadiyal, for respondents.

CORAM : ROHIT B. DEO, J.

DATED : 03.03.2022

ORAL JUDGMENT :

Heard. **RULE.** With consent, the petition is heard finally.

2. The petitioner is the defendant 2 in Regular Civil Suit 2731 of 2012 (which was initially registered as Regular Civil Suit 431 of 2005), which is instituted by the plaintiffs – respondents 1 to 5 herein seeking a declaration and injunction.

3. Admittedly, the trial has commenced. The evidence of the plaintiffs is over. It appears that the evidence of the defendant 1 is also concluded. The defendant 2 did not avail the opportunity to lead evidence and vide order dated 03.10.2016, the Trial Court closed the evidence. The defendant 2 requested the Trial Court for an opportunity to lead evidence which was granted subject to payment of costs of Rs.1,500/- (One Thousand and Five Hundred Only).

4. According to the defendant 2 while preparing for the cross-examination, he came across several documents which are of vital importance and are related to the subsequent events, which took place after

the cross-examination. The defendant accordingly, preferred an application under Order VI Rule 17 of the Code of Civil Procedure seeking to amend the written statement and to incorporate reference to certain documents, which pertain to the period 16.10.1990 and 28.08.2008.

5. I have perused the application preferred under Order VI Rule 17 of the Code of Civil Procedure, and the reasons recorded by the learned Judge, while rejecting the said application, I have no hesitation in recording that the learned Trial Judge did not commit any error. It appears to me that, the application was moved only to protract the trial.

6. Irrefutably, since the trial has commenced, the proviso to Order VI Rule 17 of the Code of Civil Procedure, is triggered. No cogent explanation is given in the application to substantiate that despite the exercise of due diligence, the defendant 2 could not have brought on record the reference to the documents, which pertain to the period 1990 – 2008, before the commencement of the trial.

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

8. The learned Trial Judge is requested to conclude the hearing of the suit as expeditiously as possible, and in any event, within the next six months.