

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

WRIT PETITION NO. 4101 OF 2022

Mohammad Shoib Mohammad Rafiq

vs.

Shamshoddin s/o Umroddin Malnas

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

Court's or Judge's Orders.

Mr. P. V. Upadhyay, Advocate and Mr. S. P. Bhandarkar,
Advocate for petitioner.

CORAM : MANISH PITALE J.

DATE : 20/07/2022

By this petition, the petitioner has challenged order dated 26/04/2022 passed by the Court of 6th Joint Civil Judge Junior Division, Yavatmal, whereby an application for amendment of plaint at Exh.42 has been rejected.

2. The petitioner in the present case has filed a suit for specific performance of contract in respect of suit property specifically stated in the plaint in terms of the agreement of which specific performance is sought.

3. It appears that during the course of proceedings before the Court below in the affidavit-

in-evidence also the petitioner described the property exactly in the same manner as described in the agreement as well as the plaint. The document concerned, had to be sent to be impounded to the Collector of Stamps and according to the petitioner it was at this stage that he became aware that the description of the suit plot was wrongly stated as 61-B instead of 61-A. It is in this backdrop that the amendment application was moved, which stood rejected by the impugned order.

4. The learned counsel for the petitioner vehemently submitted that the impugned order deserved to be set aside for the reason that grave prejudice will be suffered by the petitioner, if the amendment is not granted.

5. It is further submitted that in the application seeking amendment only a mistake in stating the plot number was sought to be correct, which ought to have been granted by the Court below.

6. This Court has considered the documents on record as also the impugned order, in the backdrop of the contentions raised on behalf of the petitioner. A perusal of the material on record clearly

shows that the agreement on the basis of which specific performance was sought by the petitioner describes the suit plot as 61-B. The plaint specifically states that the suit plot is bearing number 61-B. The affidavit-in-evidence also states that the suit plot is bearing number 61-B. When a specific query was put to the learned counsel for the petitioner as to why the basic document i.e. the agreement described the suit property as plot bearing number 61-B, it was sought to be contended that fraud was played on the petitioner resulting in wrong number of the suit plot being stated in the agreement and that therefore, the amendment ought to have been granted.

7. A perusal of the application for amendment filed on behalf of the petitioner at Exh.42, does not disclose any such allegations of fraud. It is simply stated that due to mistake the plaint describes the suit property as plot No. 61-B. But there is no reference to the allegations of fraud and suppression against the respondent to clarify why the basic document i.e. the agreement also described the property as plot No.61-B. Therefore, contentions were sought to be raised on behalf of the petitioner, beyond the contents of the application for amendment filed at Exh.42 and such contentions obviously cannot be considered.

8. If the contents of the application are considered and the impugned order is perused, this Court is convinced that no error can be attributed to the Court below in passing the impugned order.

9. In view of the above, the Writ Petition is dismissed.

JUDGE