

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

WRIT PETITION NO. 4221 OF 2022

Ramrao Tulshiram Gaikwad Vs. Archana Mahendra Pawadatkar

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

Court's or Judge's orders

Mr. M.G.Sarda, Advocate for the petitioner
Mr. A.R.Deshpande, Advocate for respondent

CORAM : AVINASH G. GHAROTE, J.
DATE : 29/07/2022

1] Heard Mr. Sarda, learned counsel for the petitioner and Mr. Deshpande, learned counsel for the respondent.

2] The petition challenges the order dated 24.6.2022 passed by the learned Sessions Judge rejecting the application under Order 41 Rule 2 of CPC for raising the additional grounds on the basis that when the application was moved, the arguments of the appellant was already over and therefore, the application was merely to protract the matter. Another ground is that the petitioner has already given an admission in his written statement regarding the description of the property.

3] It is the contention of Mr. Sarda, learned counsel for the petitioner that the ground which is sought to be raised merely seeks to contend that the description of the suit property as given in the plaint is insufficient to identify the same. He submits that there is no retraction

of the admission given in the written statement, neither there is any need for any additional material being brought on record and the ground is on the basis of material on record. That being the position, in my considered opinion the petitioner ought to be permitted to raise additional grounds as they are based upon the material on record. In case the court finds that the ground is not worth accepting, it would be permissible for the court to reject it.

4] Though Mr. Deshpande, learned counsel for the respondent opposes, however, considering the contention that merely a ground is sought to be raised without any thing else, I do not see any reason not to allow the raising of the ground.

5] The petition is accordingly allowed. Permission to raise additional ground at Exh. 16 is allowed. However considering the stage at which it is made, the same shall be subject to cost of Rs.10,000/- payable as a condition precedent to the District Legal Service Authority, Akola.

6] It is made clear that no additional material than what is already on record shall be permissible to be brought on record by way of amendment or otherwise.

JUDGE

Rvjalit

Digitally sign by RAJESH
VASANTRAO JALIT
Location:
Signing Date: 03.08.2022 10:43