

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

WRIT PETITION NO. 3708 OF 2021

Amitkumar Ashokkumar Gangwani and others

vs.

M/s. Bajaj Construction Company, and others

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

Court's or Judge's Orders.

Mr. C. A. Babrekar, Advocate for petitioner.
Mr. P. R. Agrawal, Advocate for respondent No.1.
Mr. R. D. Dharmadhikari, Advocate for respondent No.3.

CORAM : MANISH PITALE J.

DATE : 05/07/2022

The petitioners have challenged order dated 27/08/2021, passed by the Court of 11th Joint Civil Judge Senior Division, Amravati, whereby an application at Exh.144 seeking amendment of the plaint has been rejected.

2. The petitioners have filed a suit for declaration and permanent injunction against the respondents herein claiming various reliefs. It is the case of the petitioners that the respondents need to be enjoined from carrying out proposed construction, which would have the effect of blocking their access to the property.

3. In the said suit, at the stage when the cross-examination of PW-1 was over, the aforesaid application was moved seeking to amend the plaint by way of adding a paragraph and also by deleting certain words in one prayer clause and instead replacing the said words with another set of words as specified in the proposed amendment. It was stated that the aforesaid amendment was necessitated when the counsel engaged later by the petitioners found that clarification was necessary and that the plaint as it stood did not clearly bring out the exact nature of grievance of the petitioners in respect of some aspects of the matter.

4. The said application was opposed on behalf of the respondents. As noted above, by the impugned order, the application for amendment stood rejected.

5. Mr. Babrekar, learned counsel for the petitioners invited attention of this Court to contents of the plaint, as also the proposed amendment. It was submitted that the amendment was essentially clarificatory in nature and for correcting certain inadvertent mistakes that had occurred. It was submitted that the counsel engaged later by the petitioners advised the petitioners to move such

application for amendment and that the Court below had erred in emphasizing on the aspect of the amendment application having been moved pertaining to facts that could be said to be within the knowledge of the petitioners, not only when earlier application for amendment was moved, but when suit itself was filed in the year 2017. It was further submitted that the Court below erred in proceeding on the basis that the proposed amendment changed the very nature of the suit.

6. Reliance was placed on judgment of the Hon'ble Supreme Court in the case of ***Varun Pahwa vs. Mrs. Renu Chaudhary, AIR 2019 SC 1186*** and judgment of this Court in the case of ***Bhimrao Laxman Kamble (since deceased) through his LRs. Sharada Bhimrao Kamble and others vs. Annaso Dhondiram Manole and another, 2018(2)Mh.L.J.276.***

7. On the other hand, Mr. P. R. Agrawal, learned counsel for the respondent No.1 submitted that no interference was warranted in the impugned order. It was submitted that the petitioners had on earlier occasions thrice amended the plaint. The facts now sought to be pleaded were clearly within the knowledge of the petitioners, not only when the earlier amendment applications were moved, but

when the suit itself was filed in the year 2017. It was submitted that the amendment could certainly not to said to be clarificatory in nature, because the pleading sought to be added and the prayer sought to be amended would clearly change the nature of the suit and it would amount to permitting the petitioners to get over certain facts that had already come on record and statements already made by PW-1 in cross-examination. On this basis, it is submitted that writ petition deserve to be dismissed.

8. This Court has perused the material on record and heard the learned counsel for the parties. By the impugned order, the Court below has rejected the application for amendment for two reasons, firstly, that the facts sought to be now pleaded were clearly within the knowledge of the petitioners at the stage of filing of the suit in the year 2017 and secondly, that the proposed amendment would change the nature of the suit.

9. In order to examine as to whether the reasons recorded by the Court below are justified, this Court has perused the plaint, the prayers made therein and the proposed amendment. Proper appreciation of the plaint shows that the thrust of the petitioners is upon restraining the respondent No.1

from carrying out construction on the northern side of the suit property and for removal of certain construction on the eastern side. The grievance of the petitioners appears to be that if such reliefs are not granted, access to their own property would be hampered. By way of amendment, the petitioners intended to add paragraph 9A to the plaint and to amend prayer clause(iv), so as to delete certain words and to add additional words in the said prayer clause.

10. This Court has perused the plaint along with the proposed amendment and it is found that the facts sought to be pleaded in the proposed paragraph 9A, cannot be said to be clarificatory in nature and they are inconsistent with the pleadings already on record. The proposed amendment of prayer clause(iv) seeks to completely change the prayer pertaining to removal/demolition of construction, as in the existing prayer the said construction is stated to be on the eastern side while by amendment the petitioners have sought to plead that construction on the northern side needs to be removed. This is inconsistent with the existing pleadings in the plaint, whereby the petitioners had pleaded that the respondent No.1 intended to undertake construction on the northern side and that

the respondent No.1 ought to be restrained from doing so.

11. The learned counsel for the petitioners is not justified in contending that only inadvertent mistakes were sought to be corrected or that when the counsel engaged later by the petitioners opined that certain clarifications were required, that the amendment application was moved. The Court below is justified in reaching the conclusion that such an amendment would indeed change the nature of the suit.

12. Insofar as reliance placed on the judgment of the Hon'ble Supreme Court in the case of *Varun Pahwa* (supra) is concerned, the Supreme Court has laid down that a mistake on the part of the counsel as regards the memo of parties on facts in the said case, was found to be an inadvertent mistake which would be corrected by way of amendment and in such facts, the prayer made on behalf of the plaintiff for amendment of the plaint was allowed. Such are not the facts in the present case, as noted herein above.

13. Insofar as the judgment in the case of *Bhimrao Kamble* (supra) is concerned, it was held

that when an amendment is sought for clarifying what is already implicit in the plaint, it cannot be said that the nature of the suit is sought to be changed and therefore, such an amendment ought to be allowed in the interest of justice.

14. This Court has already found herein above that the proposed amendment cannot be said to be explanatory in nature and that the proposed amendment is clearly inconsistent with the existing pleadings in the plaint. Therefore, the aforesaid judgment also cannot be of any assistance to the petitioners.

15. This Court is of the opinion that in the impugned order it is correctly recorded that the amendments proposed on behalf of the petitioners pertained to information which was clearly within their knowledge even in the year 2017, when the suit was filed. Admittedly, the trial in the present suit has already commenced and hence the said application was also hit by proviso to Order 6 Rule 17 of the Civil Procedure Code.

16. In view of the above, it is found that no error can be attributed to the impugned order.

17. The Writ Petition is found to be without any merit and accordingly, it is dismissed.

JUDGE