

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

WRIT PETITION NO. 4650 OF 2022

Madhukar Sadashivrao Dharamthok thr L.Rs & ors ___ Vs. ___ Anil Sadashivrao
Dharamthok

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

Court's or Judge's orders

Mr. Fidvi, Advocate h/f Mr. A.M.Sudame, Advocate for petitioners
Mr. Vikrant Giramkar, Advocate for Respondent

CORAM : AVINASH G. GHAROTE, J.
DATE : 04/10/2022

1] Heard Mr. Fidvi, learned counsel for the petitioner and Mr. Giramkar, learned counsel for respondent.

2] The petition challenges the order dated 6.7.2022, whereby the application filed by the plaintiff for amendment of the plaint has been rejected on the ground that the Appellate Court has remanded the matter by its judgment dated 3.3.2022 to be decided afresh from the stage of cross examination of the defendant within six months. The amendment is sought on the ground that during the pendency of the appeal, the defendant was not using the premises and had kept it under lock and key and so also had purchased a new house at Amravati wherein he was residing with his family.

3] Though the learned Appellate Court had remanded the matter back to the Trial Court to be decided from the stage of cross examination of the defendant, however, such remand was for the purpose of decision afresh on the issue of bonafide requirement and comparative hardship. The plea of the defendant having kept the premises under lock and key and acquired a premises of his own, would be a plea which would go to the very root of the matter, for which it has been remanded, considering which as the said event is a subsequent event, the impugned order which does not consider this position, is hereby quashed and set aside and the application for amendment at exh. 23 filed by the plaintiff is allowed.

4] The petition is allowed in above terms. No costs.

JUDGE

Rvjalit