

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

WRIT PETITION NO. 6245 OF 2022

Rakesh Narayan Ghosekar

..VS..

Jawaharlal s/o Manoharlal Sonabarse

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

Court's or Judge's orders

Ms. Shiba Thakur, Advocate for the petitioner.

CORAM : VINAY JOSHI, JJ.
DATED : 21/11/2022.

Heard.

2. The petitioner/defendant has challenge two orders dated 04.03.2022 by which the First Appellate Court has declined to allow the amendment in written statement and to take an additional ground in appeal memo.

3. The respondent/plaintiff has filed Regular Civil Suit No.272 of 2002 under the Maharashtra Rent Control Act, 1999 seeking possession from petitioner/tenant. The suit was decreed in the year 2014. The possession decree has been challenged by the petitioner/defendant) in R.C.A. No.102 of 2015 in which the amendment was sought.

4. It is contended that the brother of the plaintiff had filed a partition suit wherein the plaintiff's 1/9th share was declared. It is stated that in said execution, the Court Commissioner submitted the report that property cannot be partitioned and it was kept for

auction. It is the petitioner's contention that he was unaware about the partition suit followed by decree and auction proceeding and therefore he sought an amendment in written statement which has been rejected.

5. It is informed that the First Appellate Court has heard final arguments and appeal is kept for judgment on 24.11.2022. In appeal, amendment has been sought pertaining to the instances about the suit of the year 2002 in which decree has been passed in the year 2011. Though the plaintiff was held to be joint owner, the suit by one of the co-owner against the tenant, is maintainable. There is no justification as to why at such a belated stage, in the appeal the amendment is sought. The only contention appears that the petitioner has recently came to know about the proceeding. In fact the petitioner has not challenge landlord-tenant relationship in the suit, moreover there is statutory estoppel. When the matter is fixed for final judgment, I do not find any reason to entertain the writ petition.

6. In view of above, the petition stands dismissed. No order as to costs.

(VINAY JOSHI, J.)

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