

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

WRIT PETITION NO. 7590 OF 2019

Moreshwar s/o Nathuji Pohakar and others

vs.

Krushna s/o Nathuji Bawane and another

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

Court's or Judge's Orders.

Mr. P. D. Randive, Advocate for petitioners.

CORAM : MANISH PITALE J.

DATE : 21/09/2022

By this petition, the petitioners i.e. original plaintiffs have challenged order dated 31/08/2019, passed by the Small Causes Court, Nagpur whereby an application seeking amendment of plaint at Exh.36 was rejected.

2. The petitioners have filed suit for eviction against the respondents, inter alia, on the ground of bona fide need. According to the learned counsel for the petitioners, the said amendments ought to have been allowed, for the reason that it was nothing but an attempt on the part of the petitioners to elaborate pleadings already on record pertaining to the aspect of bona fide need.

3. A perusal of the impugned order shows that the application has been rejected primarily on the ground that trial has already commenced and that the proviso to Order 6 Rule 17 of the Code of Civil Procedure, 1908 (CPC) operated against the petitioners, particularly because they had failed to show due diligence in moving the application before the trial commenced.

4. The learned counsel for the petitioners submits that in terms of the law that has now been clarified by the Hon'ble Supreme Court and this Court in various judgments, the application for amendment ought to have been allowed.

5. This Court issued notice in the present writ petition on 18/11/2019, and granted interim relief. The respondents have been served and despite repeated opportunities granted to them, they have chosen not to appear before this Court to contest the present writ petition.

6. This Court has perused the material on record and considered the submissions made on behalf of the petitioners. The Hon'ble Supreme Court in the case of ***Rewajeetu Builders and Developers vs. Narayanswamy and Sons and others; 2009 (10) SCC***

84, deliberated upon the effect of introduction of proviso to Order 6 Rule 17 of the CPC, in order to examine whether applications moved for amendment after commencement of trial could be considered and in what manner and in what circumstances such applications could be allowed. The approach to be adopted by Courts in such circumstances was deliberated upon and specified by the Supreme Court in the aforesaid case. In paragraph 63 of the said judgment, the Supreme Court enumerated the factors to be taken into consideration while dealing with the application for amendment and it was held as follows:-

“Factors to be taken into consideration while dealing with applications for amendments

63. *On critically analysing both the English and Indian cases, some basic principles emerge which ought to be taken into consideration while allowing or rejecting the application for amendment:*

(1) whether the amendment sought is imperative for proper and effective adjudication of the case;

(2) whether the application for amendment is bona fide or mala fide;

(3) the amendment should not cause such prejudice to the other side which cannot be compensated adequately in terms of money;

(4) refusing amendment would in fact lead to injustice or lead to multiple litigation;

(5) whether the proposed amendment constitutionally or fundamentally changes the nature and character of the case; and

(6) as a general rule, the court should decline amendments if a fresh suit on the amended claims would be barred by limitation on the date of application.

These are some of the important factors which may be kept in mind while dealing with application filed under Order 6 Rule 17. These are only illustrative and not exhaustive.”

7. In this context, the learned counsel appearing for the petitioners is also justified in relying upon judgment of this Court in the case of ***Anil s/o Ramsing Bilawar vs. Anita w/o Gopal Kadam (Judgment and order dated 06/08/2021, passed in Writ Petition No.7721 of 2019)***, wherein this Court has taken a review of number of judgments pertaining to the aforesaid aspect of the matter and it has been held that where the nature of the suit does not undergo a change and the amendment is found necessary for decision on the real questions that arise between the parties, the amendment ought to be allowed.

8. In view of the above, this Court is of the opinion that the Court below erred in rejecting the application filed on behalf of the petitioners and that in the interest of justice, the amendment ought to have been allowed, particularly for the reason that introducing the proposed amendment would not only elaborate the aspect of bona fide need projected on behalf of the petitioner, but it would certainly assist the Court below in deciding the real questions in controversy between the parties.

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

10. The impugned order passed by the Court below is quashed and set aside.

11. The application for amendment at Exh.36 is allowed in terms of the prayers made therein. The amendment be carried out within three weeks from today.

12. The Court below shall make an endeavour to expeditiously dispose of the suit.

JUDGE

*Digitally signed by*RAVIKANT
CHANDRAKANT KOLHE
*Signing Date:*23.09.2022
17:19