

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

WRIT PETITION NO. 7961 OF 2019

Vilas Punjabrao Dhote-Versus- Vinay Baburao Nichal

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

Court's or Judge's orders

Mr.S.A.Mohta, Advocate for petitioner
Mr. A.B.Patil, Advocate for Respondent.

CORAM : AVINASH G. GHAROTE, J.

DATE : 22/08/2022

1] Heard Mr. Mohta, learned counsel for the petitioner and Mr. Patil, learned counsel for the respondent.

2] The petition challenges the order dated 4.10.2019, below Exh. 84, whereby the plaint is sought to be amended seeking the relief of refund of earnest money. The learned Trial Court by the impugned order has allowed the application.

3] Mr. Mohta, learned counsel for the petitioner submits that the since the application was filed at the stage of arguments, the same ought not to have been allowed, in light of proviso to Order VI Rule 17 of CPC.

4] Mr. Patil, learned counsel for respondent submits that the contention is misconceived for the reason that the suit is one for specific performance and therefore, the proviso to Order VI Rule 17 would not be

attracted in light of language of Section 22 of Specific Relief Act.

5] Section 22 of the Specific Reliefs Act creates an exception to the proviso to Order VI Rule 17 of CPC and makes it mandatory for the Court to grant an application for amendment “at any stage of the proceedings”, in case the amendment relates to a relief for possession, partition, refund of money etc.

4] In the instant case, by the amendment though it is styled under Order VI, Rule 17 of CPC, what is sought is a relief of refund of earnest money, which is squarely covered under the provisions of Section 22 of Specific Relief Act, in view of which the proviso to Order VI Rule 17 of CPC is clearly not attracted. That being the position, I do not find any reason to interfere in the order dated 4.10.2019 below Exh. 84 granting amendment.

5] Since Mr. Mohta, learned counsel for the petitioner does not press the challenge to the order dated 4.10.2019 below Exh. 85, the same is dismissed.

6] The petition is accordingly dismissed in the above terms. No costs.

JUDGE

Rvjalit

Digitally sign byRAJESH
VASANTRAO JALIT
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Signing Date:22.08.2022 14:59