

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

WRIT PETITION NO.342/2023
Milind s/o Vijay Sonone..Vs..Kishor s/o Pralhadrao Gulhane

with
WRIT PETITION NO.343/2023
Pradip s/o Vasantrao Sonone...Vs...Kishor s/o Pralhadrao Gulhane

with
WRIT PETITION NO.344/2023
Rajesh s/o Dadarao Sonone...Vs...Kishor s/o Pralhadrao Gulhane

with
WRIT PETITION NO.345/2023
Vasantrao Shamrao Sonone (Since Dead) through Legal Heirs Avinash s/o
Vasantrao Sonone and others
..Vs..
Kishor s/o Pralhadrao Gulhane

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

Court's or Judge's orders

Shri M.I. Dhatriak, Advocate for petitioners
Shri D.S. Joshi, Advocate for respondent

CORAM : AVINASH G. GHAROTE, J.

DATE : 21/02/2023

1. Heard Shri M.I. Dhatriak, learned counsel for the petitioners and Shri D.S. Joshi, learned counsel for the respondent.

2. The petitions challenge the order of the learned Small Causes Court, whereby the application for amendment of

the plaint has been allowed, subject to costs of Rs.500/-.

3. Shri Dhatrak, learned counsel for the petitioners assails the impugned order dated 21/11/2022, contending that the amendment application was filed at the stage when the evidence of the plaintiff had already commenced and therefore, the plea of due diligence has not been rightly considered by the learned Small Causes Court. It is further contended that by the proposed amendment, an enhanced claim for damages was permitted, which is impermissible in law and therefore, the impugned order is liable to be quashed and set aside.

4. Shri Joshi, learned counsel for the respondent submits that the proposed amendment is merely explanatory in nature, inasmuch as, the location of the suit property is being pointed out. Insofar as the claim for damages is concerned, he submits that original plaint itself contains a relief for damages of Rs.28,000/-, which is only being enhanced and the amendment in that regard has been made effective from the date of the application for amendment, for the purpose of limitation. He further points out that the cost, on which the amendment was allowed, has been accepted by the learned counsel for the petitioners/defendants and therefore, on this count, the grievance raised now is not justified.

5. A perusal of the proposed amendment would indicate that para 5 A is of an explanatory nature, indicating the location, where the suit property is situated and the

expected rent which is prevailing. The claim for damages has also been allowed from the date of the application. Though the proviso to Order 6 Rule 17 of the Code of Civil Procedure is pressed into service, however, considering that the proposed amendment is merely explanatory in nature and has been allowed from the date of the application, the grievance on this count appears to be unjustified. The propped amendment does not change the nature of the suit or the relief claimed. That apart, the learned counsel for the petitioners has also accepted the cost of Rs.500/- imposed for allowing the amendment, which is evident from the endorsement made at the bottom of the application itself, which indicates acceptance of the order by the petitioners.

6. In view of the above position, I do not see any reason to interfere in the impugned order. The writ petitions are therefore dismissed. No order as to costs.

(AVINASH G. GHAROTE, J.)

Wadkar