

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

WRIT PETITION NO.686/2023

Smt. Preeti w/o Umesh Lahoti and another

...Versus...

Akbarkhan Ajmatkhan and others

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

Court's or Judge's orders

Shri R.L. Khapre, Sr. Advocate assisted by Shri D.R. Khapre, Advocate for petitioners
Shri H.V. Dhage, Advocate for respondent nos.1 and 2

CORAM : AVINASH G. GHAROTE, J.

DATE : 06/02/2023

1. The petition questions the impugned order dated 05/12/2022, by which an application under Order 6 Rule 17 r/w Order 1 Rule 10 of the Code of Civil Procedure has been allowed. The application was filed at the stage when the matter was fixed for hearing on the application below Exh.5 and has been allowed by the impugned order.

2. Shri R.L. Khapre, learned senior counsel for the petitioners submits that the plea, which is sought to be raised by way of the proposed amendment, is clearly barred by limitation and therefore, ought not to have been allowed by the learned Trial Court. He further submits that Mahesh Urban Co-operative Credit Society, Mehkar, who has been permitted

to be added as the defendant no.6, has no concern with the suit and therefore, at the most, its status could be that of a witness and not of a defendant.

3. Shri Dhage, learned counsel for the respondent nos.1 and 2 supports the impugned order.

4. It is necessary to note that the application has been filed at a stage when the matter was fixed for hearing on Exh.5 and therefore, the proviso to Order 6 Rule 17 of the code of Civil Procedure does not apply.

5. The contention regarding the plea raising a challenge to the document dated 24/07/2015, is barred by limitation and therefore, ought not to be allowed is a plea, which will have to be tested on the basis of the evidence, which may be led during the course of trial and therefore, is not a plea which ought to be thrown out at the initial stage itself. The impugned order, therefore, insofar as it permits amendment to be carried out, cannot be interfered.

6. Insofar as the contention that the defendant no.6- Mahesh Urban Co-operative Credit Society, Mehkar is neither a proper or necessary party, it is apparent that there are no specific averments made in the application by respondents to indicate as to how and in what nature the defendant no.6 is a proper and necessary party.

7. Shri Khapre, learned senior counsel for the petitioners is, therefore, right in contending that the added

defendant no.6 having no relation with the dispute in the suit, his status may at the most, be that of the witness, in view of which, the impugned order dated 05/12/2022, insofar as it permits the addition of defendant no.6, is hereby quashed and set aside.

8. The writ petition is partly allowed in the above terms. No order as to costs.

(AVINASH G. GHAROTE, J.)

Wadkar