

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

WRIT PETITION NO. 1112 OF 2021

Virendra Harichand Khawase __ Vs. __ Sawalram Ghasilal Agrawal and one

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

Court's or Judge's orders

Mr. R.L.Khapre, Senior Advocate assisted by Mr. M.M.Dandekar, Advocate for
petitioner
Mr.R.K.Borkar Advocate for Respondent no.1

CORAM : AVINASH G. GHAROTE, J.
DATE : 17/03/2023

1] The petition challenges the order dated 14.12.2020, by which the application for amendment seeking to raise a plea that taking advantage of the rejection of the application for injunction, the defendant has taken possession and made construction thereupon and therefore, the petitioner/plaintiff would be entitled to restitution, has been rejected.

2] It is contended that the entire evidence to this effect is already on record. If that be so, then mere absence of a plea in the plaint would not debar the petitioner/plaintiff from raising a plea for restitution, as that is a natural consequence in case a decree for injunction is granted holding that on the date of the suit the plaintiff was in possession. The

application for amendment of the plaint has been filed after the arguments of the parties are over and as such, it is clearly hit by the proviso to Order 2 Rule 17 of the CPC. I am therefore not inclined to interfere in the impugned order in view of what has been stated above. The petition is dismissed. No costs.

JUDGE

Rvjalit