



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

WRIT PETITION NO.1267 OF 2020

Smt. Rubina W/o Shamir Kashmiri .Vs. Shri Sajid S/o Kadir Patel

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

Court's or Judge's Order

Shri S.S. Shinde, Advocate for petitioner.

Shri Mohd. Ahfaz Qureshi, Advocate for respondent.

CORAM : ANIL S. KILOR, J.

DATED : 11/10/2023

1. The order below Exh.26 dated 04.01.2020 rejecting the application filed by the petitioner under Order 6 Rule 17 of the Code of Civil Procedure (CPC) for amendment of the written statement, is under challenge in this writ petition.

2. There is no dispute that the application was moved after the commencement of the trial. However, sufficient pleadings has been made by the petitioner as regards due diligence in compliance of proviso Order 6 Rule 17 of the CPC.

3. The petitioner is seeking amendment for the purpose to give further clarification in respect of the title of the plaintiff over the suit property.

4. The application was rejected by the trial Court for the reason that, it will change the nature of dispute as it was filed at belated stage i.e. after the evidence of the plaintiff was commenced. The another reason is that, according to the trial Court, the amendment is not necessary.

5. In the above referred backdrop, the learned counsel for the respondent submits that, as the amendment is not necessary and it was filed at the belated stage, the learned trial Court is not committed any error in rejecting the application. Accordingly, he prays for dismissal of the present writ petition.

6. The paragraph 5 of the application for amendment states the reason why the amendment was not sought at earlier stage. Paragraph 5 of the application which read thus:

“The defendant most humbly and respectfully submits that despite providing the entire instructions in respect of the transactions executed in between the plaintiff and defendant and disputes in the title of the plaintiff, same fact was not been included in her written statement by her previous counsel. Furthermore, there was a continuous communication gap in between the defendant and her counsel. It is further submitted that when the defendant had withdrawn the brief papers of the present case from her previous counsel and had narrated the entire facts to the new counsel and it was found that the aforesaid pleadings in the form of amendment was not in her written statement and as

such the defendant will be suffered in lieu of aforesaid pleadings.”

7. Thus, it is evident that, after the change of lawyer by the defendant, she realized that despite instructions were given in respect of transaction executed between the plaintiff and the defendant certain facts were not narrated and therefore, the application for amendment was filed.

8. Since the amendment is of clarifactory in nature, I am of the opinion that, no prejudice will be caused if the amendment to the written statement is permitted. Accordingly, I pass the following order:

- i) The writ petition is **allowed**.
- ii) The order below Exh.26 dated 04.01.2020 passed by the 4th Jt. Civil Judge, Sr. Dn., Nagpur, is hereby quashed and set aside. Consequently, application Exh.26 is allowed.

Writ Petition is **disposed of** accordingly. No order as to costs.

JUDGE