

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

WRIT PETITION NO.6027 OF 2022

Nitin Gajanan Padmane .Vs. Shri Gajanan Maharaj Sansthan Shegaon, through its Managing
Trustee, Nilkanth S/o Shivshankar Patil and others

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

Court's or Judge's Order

Shri J.B. Gandhi, Advocate for the petitioner.

Shri A.R. Patil, Advocate for the respondents/caveator.

CORAM : ANIL S. KILOR, J.

DATED : 18/01/2023

1. Heard.

2. In this case, the order below Exh.109 dated 11.02.2022 passed by the Civil Judge Junior Division, Shegaon, District Buldhana, is under challenge. The learned trial Court vide impugned order rejected the application of the petitioner filed under Order 6 Rule 17 of the Code of Civil Procedure.

3. The whole application Exh.109 is based on an apprehension that if the plaintiff demolishes the first floor, it may cause damage to the shop in possession of the petitioner.

4. Further the defendant wants to amend the written statement and bring the subsequent facts on record to avoid any technical objection to the application filed by him for grant of temporary injunction, on the ground that

the pleadings made in the application are not the part of the written statement and therefore, such pleadings cannot be permitted to be raised in the application for temporary injunction first time.

5. The application Exh.109 was filed by the defendant on 15.12.2021 i.e. more than one year before and therefore, specific question was put to the learned counsel for the petitioner about the present status of the suit property and whether the work of demolition is completed. Thereupon, he states that the plaintiff has not carried the demolition work after filing of the application Exh.109.

6. Shri Patil, learned counsel for the plaintiffs/respondents makes a statement that there is no such intention of the plaintiffs to demolish any part of the building. He further on instructions makes a statement that whenever the plaintiffs would be desirous of carrying out of such work of demolition, he would take permission of the Court.

7. In the light of the statement and undertaking given by the plaintiffs, I am of the opinion that the apprehension expressed by the defendant and the basis for moving application for amendment or application for temporary injunction does not survive. In the circumstances, the petition is **disposed of**.

8. It is made clear that the observations made in the application in the order below Exh.109 dated 11.02.2022 will not come in the way of the petitioner, in case, in future, they moves any such application on granting permission by the Court for demolition of any part of the building, at the request of the plaintiff.

JUDGE