

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

Writ Petition No.3445/2019

Smt. Shakuntala and others V Smt. S. Devikarani and others

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

Court's or Judge's Orders

Mr. V.A. Dhabe, Adv. for petitioners.

Mr. C.A. Joshi, Adv. for resp. nos. 5 and 6.

CORAM : AVINASH G GHAROTE, J.

DATE : 05-01-2023

Heard Mr. Dhabe, learned Counsel for the petitioners and Mr. Joshi, learned Counsel for respondent nos. 5 and 6. None appears for respondent nos.1, 2, 4 and 7 though served.

2. The petition challenges the order dated 17-02-2018 passed below Exh 102 in an application for amendment of the plaint which has been rejected by the trial Court on the ground that it change the nature of the pleadings. Though learned Counsel for respondent nos.5 and 6 opposes, what is material to note is that the application has been filed before the commencement of trial and the defendants would have an opportunity to consequentially amend the written statement. Though the amendment, may have the effect of introducing the additional averments by deleting the earlier averments, the burden would always

upon the plaintiff to prove his case.

3. Considering the case at hand in which the application has been filed, the petition is allowed, however, at the costs of Rs.10,000/- to be deposited in the trial Court within a period of one week from today as a condition precedent. The impugned order dated 17-02-2018 is set aside and Exh 102 is allowed.

JUDGE