

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

WRIT PETITION NO.4452 OF 2022

Smt. Gitabai Babarao Mahakulkar and others .Vs. Ashok Dharmaji Gowardipe and
another

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

Court's or Judge's Order

Shri A.A. Dhawas, Advocate for the petitioners.

Shri J.Y. Ghurde, Advocate for the respondents.

CORAM : ANIL S. KILOR, J.

DATED : 10/04/2023

1. Heard.
2. The order below Exh.37 dated 23.04.2022 passed by the 2nd Jt. C.J.J.D., Wani, rejecting application filed under Order VI Rule 17 of the Code of Civil Procedure for amendment of written statement and thereby to include a counter claim.
3. The petitioners are the original defendants whereas, the respondents are the original plaintiffs. Plaintiffs filed a suit for possession and declaration that the agreement to sale dated 20.06.1983 is null and void.
4. The petitioners filed an application for amendment of the written statement and thereby to include a counter claim. The said application came to be rejected by

the impugned order on the ground that the counter claim is barred by limitation.

5. It is submitted that the relief of specific performance was sought by way of amendment. According to the petitioners, the limitation would start from the date of denial of part performance by the vendor, as no date of execution of sale deed was mentioned in the agreement to sale dated 20.06.1983. It is therefore, submitted that the date of filing of the suit would be the date from which the limitation would start.

6. It is further submitted that this Court had granted stay to the proceeding in Writ Petition No.1383 of 2018 vide order dated 08.03.2018 and thereafter from March, 2020 the limitation was extended because of Covid-19. It is submitted that, the learned trial Court failed to consider the above referred facts while rejecting the application for amendment.

7. On the other hand, the learned counsel for the respondents points out that stay to the proceeding does not mean that there was a prohibition imposed by this Court for filing any application including application for amendment. He, therefore, submits that the reasons cited by the petitioners that because of stay to the proceeding, he could not file the amendment application, cannot be accepted.

8. As far as another submission is concerned, that there was Covid-19 and during the said period, the limitation was extended, it is pointed out that even if that period is excluded, the claim for specific performance is beyond the limitation of three years. Accordingly, the learned counsel for the respondents prays for dismissal of the present writ petition.

9. In light of the rival submissions of the learned counsel for the respective parties, I have perused the record and the impugned order.

10. Undisputedly, there was a stay to the Regular Civil Suit No.43 of 2016 as per order dated 08.03.2018 passed by this Court in Writ Petition No.1383 of 2018. However, the petitioners cannot claim any advantage of this as it does not mean that there was a prohibition to file an application for amendment. Moreover, the said argument cannot be accepted, as this was not the ground raised by the petitioners for not filing the application within time, before the trial Court.

11. Furthermore, I find substance in the submissions of the learned counsel for the respondents that even if the period of Covid-19 is excluded, the prayer for specific performance is time barred. In that view of the matter, I do not find any merit in the present writ petition.

Accordingly, the writ petition is **dismissed**.