



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

Writ Petition (WP) No. 1394 of 2022

Kushal S/o Vasant Rao Ramteke and another

Versus

Prakash S/o Suryabhan Kene

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

Court's or Judge's Order

Shri Sawan Alaspurkar, Advocate for the petitioners.

Shri Vijay Panpalia, Advocate for the respondent.

CORAM : ANIL S. KILOR, J.

DATED : 25th SEPTEMBER, 2023.

Heard.

2. The order dated 11th February, 2020 passed by the Civil Judge, Junior Division, Chandur Railway in Regular Civil Suit No. 9 of 2016 rejecting the application moved under Order VI Rule 17 of the Code of Civil Procedure for amendment, is under challenge in this writ petition.

3. It is the case of the petitioner that during the pendency of the suit the defendant obstructed the suit way by erecting a fencing. Accordingly, the petitioner wants to clarify the position in this regard in a suit filed by him for permanent injunction. The prayer clause which the petitioner wants to add reads thus:

“defendant be ordered to remove the alleged obstruction and fencing made on the suit-way by the defendant, immediately within a month after passing the order, and the defendant or his heirs, or his representatives further be restrained permanently from creating any sort of obstruction or fencing or anything like, to obstruct the suit way of the plaintiffs, which is shown by letters E to F.”

4. Learned trial Court while rejecting the application for amendment has observed that even if the plaintiff succeeds in a suit and if the trial Court passed the order granting permanent injunction it would cover the relief which the petitioner wants to seek by way of amendment.

5. In absence of any stay granted by this Court to the proceeding pending before the trial Court, the suit proceeded further and it has reached to the stage of argument.

6. In that view of the matter, since the learned trial Court has made it clear in the impugned order that if the suit is decreed and permanent injunction is granted and the relief which the petitioner is seeking through amendment would cover, I do not find any reason to interfere with the impugned order. Accordingly, the writ petition is dismissed.

[ANIL S. KILOR, J.]