



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

Writ Petition No.3847/2019

M/s Gajanan Construction, Arvi V Krushi Utpanna Bazar Samiti, Arvi

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

Court's or Judge's Orders

Mr. P.A. Dharaskar, Adv for petitioner.
Mr. S.S. Ghate, Adv for respondent.

CORAM : AVINASH G GHAROTE J.
DATE : 04-10-2023

Heard Mr. Dharaskar, learned Counsel for the petitioner and Mr. Ghate, learned Counsel for the respondent.

2. The petition challenges the order dated 26-03-2019 passed by the learned trial Court allowing the application for amendment of the plaint filed at a stage when the affidavit in lieu of evidence of the plaintiff already stood filed, however the further chief is yet to be recorded. Mr Dharaskar, learned Counsel for the petitioner relying upon the judgment in the case of Mahadeo Vs Balaji and others (2012 SCC Online 1283) submits, that since the trial has commenced the amendment ought not to have been allowed. He, therefore, submits that the impugned order is liable to be quashed and set aside and the application be dismissed.

3. Mr. Ghate, learned Counsel for the respondent,

by inviting my attention to the proposed amendment submits that it is merely clarificatory in nature and does not change the nature of the suit as is contended. He submits that the proviso, cannot be interpreted in a manner, to disbar clarifications, which is not the purport and import of the proviso to Order 6 Rule 17 of the Code of Civil Procedure (CPC).

4. A look at the proposed amendment indicates that it is in two parts; the first part merely seeks to correct the month in para 1 of the plaint from August, 2011 to October, 2011, which would indicate, that it is merely clarificatory in nature and does not have any effect of changing the nature of the suit. The second part of the amendment indicates averments to be inserted by para 1(A) which also seeks to clarify the position as already existing in the plaint. It would be therefore apparent that the proposed amendment is merely clarificatory in nature to the averments already existing on record and do not have the effect of changing the nature of the suit as is contended.

5. The proviso to Order 6 Rule 17 of the CPC has to be construed in a manner, which would achieve a balance, regarding bringing something on record consequent to the commencement of trial in light of the language of the proviso, and in view of the basic purpose of Order 6 Rule 17 of the CPC, which contemplates permitting to bring on record something which is necessary for determining the real question in controversy between the parties by way of

amendment. The provision cannot be read in a manner so as to destroy the very purpose and object of Order 6 Rule 17 of the CPC.

6. In that view of the matter, since the proposed amendment is merely clarificatory in nature, I do not see any reason to interfere in the impugned order, the petition is dismissed. No costs.

7. Needless to say that the petitioner shall be free to make consequential amendment in the written statement in view of the amendment allowed by the impugned order.

JUDGE