

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

WRIT PETITION (WP) NO. 3658/2018

Vinay s/o Bhupendranath Nagpurey,
Aged 52 years, Occ. Business,
R/o 206/12, Civil Lines, Nagpur.

..... PETITIONER

// VERSUS //

1. Mrs. Alpana w/o Pravin Takhalate,
Aged 49 years, Occ. Housewife,
R/o C/o Mr. Pravin Takhalate,
Chaitanya Apartment, Flat No. 2,
Bharat Nagar, Amravati Road, Nagpur,
Now residing at Flat No. 202, Himalaya
Galaxi, Plot Nos. 62 and 63,
Kothari Layout, Mouza Kachimet,
Amaravati Road, Nagpur-16.
2. Smt. Shubhangi wd/o Amol Nagpure,
Aged 50 years, Occ. Housewife,
3. Shrutika d/o Amol Nagpure
(now Smt. Shrutika w/o Harmitsingh Tuli),
Aged 28 years,
4. Payal d/o Amol Nagpure,
Aged 26 years, Student,
5. Juhi d/o Amol Nagpure,
Aged 24 years, Student,
Nos. 2 to 5, R/o Plot No. 10,
Surana Layout, Raj Nagar, Katol Road,
Nagpur-440013.
6. M/s. Smile Realtors Private Limited,
Having its registered Office at 206/5,
Palm Road, G.P.O. Square, Civil Lines,
Nagpur- 440001 through its Director
Shri Anojkumar s/o Ratanlalji Agrawala. RESPONDENT(S)

Mr. Sanjay B. Mohta, Advocate for the petitioner
Mr. S.S. Pendke h/f. Mr. S.S. Shahane, Advocate for the respondent nos.
2 to 5
Respondent nos. 1 and 6 are served

CORAM : A.S. KILOR, J.

DATED : 21/04/2023

ORAL JUDGMENT :

Rule. Rule made returnable forthwith. Heard the learned counsel for the parties.

2. The order dated 05.07.2017 below Exh. No. 99 in Special Civil Suit No. 281/2012 passed by learned 15th Joint Civil Judge Senior Division, Nagpur rejecting application under Order VI Rule 17 of the Civil Procedure Code, 1908 (for short the “CPC”) is under challenge in this writ petition.

3. The petitioner is the original plaintiff who filed the Special Civil Suit No. 281/2012 for declaration, decree of preemption, alternately for partition, confirmation of possession, permanent injunction and cancellation of sale deed dated 11.01.2012. In the said suit, the plaintiff filed an application under Order VI Rule 17 read with Section 151 of the CPC and thereby prayed for amendment of the suit. The plaintiff wanted to bring on record the facts revealed by the plaintiff

subsequent to the filing of the suit. He has explained the proposed amendment in paragraph 9A of the application. The said application came to be rejected on the ground mentioned in paragraph 8 of the impugned order, which reads thus:-

“8. I have given anxious consideration to the submissions advanced learned advocate for the plaintiff. I also carefully gone through the record and application. No doubt the plaintiff has made reference as to Special Civil Suit No. 642/2004 in his plaint Exh. 1. But in my considered opinion the plaintiff is not entitled for grant of the present application for proposed amendment for the following reasons.

a) For the averments made by the plaintiff in application itself, it can be said that plaintiff was aware about the said mutation proceeding. For as mentioned by the plaintiff in the application itself, the said application for mutation was opposed by the plaintiff and his mother Vatsala vide communication dated 22.12.2005. Thus, considering this aspects, it can not be said that the plaintiff came to know about the said facts after filing of the present suit. He has not given any just reason for not mentioning those facts in plaint Exh. 1 at the time of filing suit.

b) The plaintiff can bring those facts on record by placing certified copy of those documents on record”

4. The Hon’ble Supreme Court in the case of ***Life Insurance Corporation of India Vs. Sanjeev Builders Pvt. Ltd and anr.***¹ while reiterating the principles and factors to be considered while considering the application for amendment, in paragraph no. 70 has held as under:-

1 AIR 2022 SC 4256

“70. Our final conclusions may be summed up thus:

(i) Order II Rule 2 CPC operates as a bar against a subsequent suit if the requisite conditions for application thereof are satisfied and the field of amendment of pleadings falls far beyond its purview.

The plea of amendment being barred under Order II Rule 2 CPC is, thus, misconceived and hence negated.

(ii) All amendments are to be allowed which are necessary for determining the real question in controversy provided it does not cause injustice or prejudice to the other side. This is mandatory, as is apparent from the use of the word “shall”, in the latter part of Order VI Rule 17 of the CPC.

(iii) The prayer for amendment is to be allowed

(i) if the amendment is required for effective and proper adjudication of the controversy between the parties, and

(ii) to avoid multiplicity of proceedings, provided

(a) the amendment does not result in injustice to the other side,

(b) by the amendment, the parties seeking amendment does not seek to withdraw any clear admission made by the party which confers a right on the other side and

(c) the amendment does not raise a time barred claim, resulting in divesting of the other side of a valuable accrued right (in certain situations).

(iv) A prayer for amendment is generally required to be allowed unless

(i) by the amendment, a time barred claim is sought to be introduced, in which case the fact that the claim would be time barred becomes a relevant factor for consideration,

(ii) the amendment changes the nature of the suit,

(iii) the prayer for amendment is malafide, or

(iv) by the amendment, the other side loses a valid defence.

(v) In dealing with a prayer for amendment of pleadings, the court should avoid a hypertechnical approach, and is ordinarily required to be liberal especially where the opposite party can be compensated by costs.

(vi) Where the amendment would enable the court to pinpointedly consider the dispute and would aid in rendering a more satisfactory decision, the prayer for amendment should be allowed.

(vii) Where the amendment merely sought to introduce an additional or a new approach without introducing a time barred cause of action, the amendment is liable to be allowed even after expiry of limitation.

(viii) Amendment may be justifiably allowed where it is intended to rectify the absence of material particulars in the plaint.

(ix) Delay in applying for amendment alone is not a ground to disallow the prayer. Where the aspect of delay is arguable, the prayer for amendment could be allowed and the issue of limitation framed separately for decision.

(x) Where the amendment changes the nature of the suit or the cause of action, so as to set up an entirely new case, foreign to the case set up in the plaint, the amendment must be disallowed. Where, however, the amendment sought is only with respect to the relief in the plaint, and is predicated on facts which are already pleaded in the plaint, ordinarily the amendment is required to be allowed.

(xi) Where the amendment is sought before commencement of trial, the court is required to be liberal in its approach. The court is required to bear in mind the fact that the opposite party would have a chance to meet the case set up in amendment. As such, where the amendment does not result in irreparable prejudice to the opposite party, or divest the opposite party of an advantage which it had secured as a result of an admission by the party seeking amendment, the amendment is required to be allowed. Equally, where the amendment is necessary for the court to effectively adjudicate on the main issues in controversy between the parties, the amendment should be allowed. (See Vijay Gupta v. Gagninder Kr. Gandhi & Ors., 2022 SCC OnLine Del 1897).

5. The learned Counsel for the respondents strongly opposed the present petition on the ground that the proposed amendment is not

based on subsequent events. It is submitted that, it is not a case that the plaintiff had no knowledge about the said facts. He, therefore, submitted that the learned Trial Court has rightly rejected the application.

6. In the present matter, there is no dispute that the application was moved before the commencement of the trial and having considered the settled law as reiterated in the judgment of the Hon'ble Supreme Court in the case of *Life Insurance Corporation of India* (supra), in my opinion, the learned Trial Court ought to have taken liberal approach in the present matter. It appears that the facts stated in the proposed paragraph no. 9A of the application has not been considered by the learned Trial Court, while rejecting the application.

7. In these circumstances, I pass the following order:-

(a) The writ petition is allowed.

(b) Order below Exh. 99 dated 05.07.2017 passed by 15th Joint Civil Judge Senior Division in Special Civil Suit No. 281/2012 is hereby quashed and set aside and thereby, application Exh. 99 filed under Order VI Rule 17 of the CPC for amendment is allowed.

8. Rule is made absolute in the aforesaid terms with no order as to costs.

SANDIP
MAHADEV
GATE

Personal Assistant to the
Hon'ble Judge
Digitally signed by
SANDIP MAHADEV GATE
Date: 2023.04.24 17:56:09
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(JUDGE)