

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

WRIT PETITION NO.4379/2023

Sharad s/o Mahadeorao Ghate
...Versus...
Shyam s/o Shrikrushnarao Ghate 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.R. Deshpande, Advocate for petitioner
Mr. N.R. Patil, AGP for respondent nos.4 and 5

CORAM : AVINASH G. GHAROTE, J.
DATE : 17/07/2023

1. Heard Mr. Deshpande, learned counsel for the petitioner. The petition questions the order dated 29/03/2023, by which the application for amendment of the plaint has been allowed at the stage where the affidavit in lieu of evidence of the plaintiff was filed on record, however, the further examination-in-chief is yet to be recorded.
2. Mr. Deshpande, learned counsel for the petitioner/defendant submits that the requirement of due diligence as contemplated by the proviso to Order VI Rule 17 of the Code of Civil Procedure has been violated, non-consideration of which, vitiates the impugned order.
3. The due diligence clause in the proviso to Order VI Rule 17 of the Code of Civil Procedure is with an intent not to

cause prejudice to the other side by permitting pleas to be raised, which were not to the knowledge of the parties at an earlier point of time of the lis. In the instant case, the amendment is regarding the deed of relinquishment dated 25/12/1987. A copy of this document was already placed on record by the plaintiffs, which has been considered by the Court while deciding Exh.5 as per the statement of Mr. Deshpande, learned counsel for petitioner. That being the position, the petitioner/defendant was clearly aware of the document, which was already on record, more so, when Exh.5 was decided on its basis.

4. In that light of the matter, I do not see any prejudice being caused to the defendant by permitting the amendment in respect of something, which is already on record. The writ petition, therefore, does not have any merit. The same is dismissed. No order as to costs.

(AVINASH G. GHAROTE, J.)

Wadkar