



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

WRIT PETITION NO.4273 OF 2023

(Sau. Vidya Dnyandeo Ingle Vs. Smt. Sulbha wd/o Vijay Chpade and others)

*Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's Orders.*

Court's or Judge's orders.

Mr. C. N. Wankhade, Advocate for Petitioner.

CORAM: ANIL S KILOR, J.

DATE: 20th SEPTEMBER, 2023.

The rejection of amendment application moved by the plaintiff/petitioner after the commencement of trial vide order dated 10.04.2023 passed by the Civil Judge, Senior Division, Malkapur in Special Civil Suit No.8/2018 is under challenge in this writ petition.

2. As the application for amendment was moved after the commencement of trial, I tried to find out the pleadings in the amendment application regarding due diligence. In para 3, it is stated that the plaintiff got knowledge on 05.03.2022 about the facts the plaintiff wants to place on record. Whereas the application was moved in the month of December, 2022 after the commencement of the trial. When the petitioner/plaintiff got the knowledge at that time the trial was not commenced.

3. In the above referred back-drop, the learned trial Court recorded the reasons in para 5 of the order for

rejection of the application, which read thus:

5. By this application, the plaintiff intends to incorporate contentions and relief of declaration regarding sale deeds dated 07/01/2016. According to her, she firstly came to know about those sale deeds on 05/03/2022 when the defendant no.1 filed on record their copies. But, in para 21 to 23 of the W.S. of the defendant no.1 filed on 10/06/2019, there is specific reference of both sale deeds dated 07/01/2016. It seems that copy of the W.S. was received by the plaintiff on 20/07/2019. Therefore, it has to be said that the plaintiff had knowledge of those sale deeds at least on 20/07/2019. That means, her contention that she firstly came to know about those sale deeds on 05/03/2022 is apparently false and erroneous. She filed her affidavit in lieu of examination-in-chief on 05/10/2019, her further examination-in-chief was conducted on 28/01/2022 and she was partly cross-examined on 31/10/2022. Importantly, earlier also she had filed an application for amendment of plaint on 20/08/2022. But, even at that time she did not seek any amendment regarding those sale deeds. It is pertinent to mention here that she has not given any explanation/reason as to why she did not seek the proposed amendment prior to commencement of trial. Therefore, I have no hesitation in holding that the plaintiff has failed to show that in spite of due diligence she could not apply for proposed amendment before commencement of trial.

4. From the above referred finding recorded by the learned trial Court, I am satisfied that the reasons are not

perverse or contrary to record. Accordingly, I do not find any merit in the petition, the petition is dismissed.

(ANIL S. KILOR, J.)

NSN