



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

WRIT PETITION NO.6052 OF 2022

Sau. Vinita w/o Sujit Jaipuriya .Vs. Ashok Amarchand Agrawal and others

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

Court's or Judge's Order

Ms Aastha Sharma, Advocate for petitioner.

Shri Vedit Lohia, Advocate for respondent No.1.

CORAM : ANIL S. KILOR, J.

DATED : 07/09/2023

1. In this matter, the respondent No.2 is not yet served. However, from the record, it is evident that, he did not oppose the application for amendment filed by the petitioner. The petitioner tried to serve the respondent No.2 but the efforts were failed and today the application is listed for permission to make a paper publication for service on respondent No.2.

2. However, considering the fact that, the contesting respondent is the respondent No.1 and not the respondent No.2 as he did not file any reply or oppose the application for amendment. Accordingly, I am of the opinion that, this petition can be disposed of in view of the fact that the respondent No.1 is 70 years old and the suit is pending since 2016.

3. Accordingly, I proceed to consider the matter on merit.

4. A challenge is raised to the order below Exh.43 dated 29.07.2022 passed by the Civil Judge Senior Division, Daryapur, rejecting the application filed by the plaintiff for amendment under Order 6, Rule 17 of the Code of Civil Procedure. From the order, it is evident that the only reason recorded for rejection is that the application was moved after the commencement of the trial and due diligence has not pleaded by the petitioner.

5. However, it is an admitted fact that, the evidence was not commenced but the only issues were framed. The Co-ordinate Bench of this Court in a case of *Ajit Narsinha Talekar Vs. Nirmala Wamanrao Kekade and Ors.*¹ has observed that, on filing of the affidavit of evidence, the suit has commenced and not after framing of the issue.

6. Thus, the learned trial Court has committed error in considering the stage at which the application is moved i.e. after framing of issue and before the affidavit of evidence was filed, as the stage of commencement of suit.

1 2010(5) MhLJ 481

7. Furthermore, it is a settled law, that before the commencement of the trial, the Court shall take lenient view in allowing the application for amendment. Accordingly, I pass the following order:

- i) The writ petition is **allowed**.
- ii) The order below Exh.43 dated 29.07.2022 passed by the Civil Judge Senior Division, Daryapur, is set aside. The application Exh.43 is **allowed**.
- iii) Considering the age of the respondent No.1, the learned trial Court shall expedite the trial.

Writ Petition is **disposed of** accordingly. No order as to costs.

JUDGE