

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

WRIT PETITION NO.775/2023

Shaligram Jainarayan Trust Through Shri Narsingh Maharaj Deosthan Trust,
through its working President Maheshkumar Shivchand Chudiwal

...Versus...

Ambadas s/o Pratapchand Agarwal (Dead)
Sanjeev Ambadas Agrawal and others

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

Court's or Judge's orders

Shri A.A. Naik, Advocate for petitioner

CORAM : AVINASH G. GHAROTE, J.

DATE : 02/02/2023

1. Heard Shri A.A. Naik, learned counsel for the petitioner. The petition questions the order dated 10/04/2018 passed by the learned Appellate Court, rejecting the application under Order 6 Rule 17 of the Code of Civil Procedure, seeking to amend the plaint at the appellate stage and so also the order dated 05/07/2022 (pg.164), rejecting the application for review.

2. It is contended that since the President of the petitioner-Trust was an illiterate person, the plea of forfeiture was not raised in the written statement and therefore was required to be brought on record.

3. The suit for eviction, was filed in the year 1981, in which, a written statement was filed by the respondents,

denying the title of the petitioner/landlord in the year 1981 itself. The suit came to be dismissed on 22/04/2010 (pg.104), against which, an appeal has been preferred being Regular Civil Appeal No.134/2010, in which, the applications at Exhs.72 and 74 have been filed seeking to amend the plaint for raising a plea of forfeiture. The plea of forfeiture was already available to the petitioner/plaintiff in the year 1981 itself when the respondents filed their written statement in Regular Civil Suit No.51/2008 [Original Special Civil Suit No.29/1981 (pg.16)], in spite of which, no such plea was raised. The application for amendment came to be filed when the appeal was at the stage of argument. Considering that the period of 36 years has already lapsed since the plea was available, the learned Court below was correct in rejecting the application for amendment. I do not see any reason to interfere in the impugned order. The writ petition is therefore rejected. No order as to costs.

(AVINASH G. GHAROTE, J.)

Wadkar