



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

Writ Petition No.5781/2023

M/s Jaihind Builders and Developers, Amravati and others V Mahesh and others

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

Court's or Judge's Orders

Mrs. Gauri Venkatraman, Adv for petitioners.

Mr. P.R. Agrawal, Adv for resp. nos.1 to 5.

Mr. A. Gohokar, AGP for resp. nos. 6, 8 and 9.

CORAM : AVINASH G GHAROTE J.

DATE : 13-10-2023

Mrs. Venkatraman, learned Counsel for the petitioners and Mr. Agrawal, learned Counsel for respondent nos.1 to 5.

2. The petition questions the order below Exh-72 dated 22-08-2023, by which the application for amendment of the plaint, filed by the petitioners/plaintiffs at the stage when the suit was fixed for hearing on Exh-5, has been allowed.

3. The learned Counsel for the petitioners take exception to the said order on the ground that the plaintiff no.1 had filed another suit bearing RCS 363/23 in which the correct number of the property 5/1 was mentioned which suit has been withdrawn by a pursis dated 04-08-23 (pg 150). It is therefore submitted that on account of the withdrawal of the application for amendment in RCS 359/23 could not have been permitted.

4. Mr Agrawal, learned Counsel for the respondents, supports the impugned order contending that considering the stage of the suit which is fixed for hearing on exh-5 and the fact that RCS 363/23 was not by all the plaintiffs in RCS 359/23, the withdrawal of RCS 363/23 would not come in the way of the present plaintiffs/respondents in filing application for amendment.

5. A perusal of the plaint in RCS 363/23 (pg 46) would indicate that it is only the plaintiff no. 1 in the present suit, who was one of the plaintiffs in Rcs No. 363/23. The plaintiff nos. 2 to 5, were never parties in RCS 363/23 thus the fact of withdrawal of RCS 363/23, cannot come in way of the amendment to be effected in the present suit, which is not only by the plaintiff no. 1 but by the plaintiff nos. 2 to 5 also. That apart the suit is at a very premature stage as indicated above from the fact that the application for amendment came to be filed at the stage when the suit was fixed for hearing on Exh 5.

6. It is also material to note that the property which is the subject matter of RCS No.359/23 is clearly identifiable from the description which is given from the table of tenanted premises given in para 1 of the plaint in RCS 359/23 (pg 27). Except for correction in the plot number from 60/1 to 5/1 which clearly would indicate correction of the misdescription of the property, nothing else is being sought by the application for amendment Exh 72. Though the allegations of malafides, in the descriptions of the property

are being canvassed, the learned Counsel for the petitioners by relying upon **Life Insurance Corporation of India Vs Sanjeev Builders Private Limited and another**, (2022 SCC Online SC 1128), in my considered opinion merely correcting the description of the property at a stage where Exh 5 yet to be decided, cannot be held to be malafide. The amendment would also be necessary for the reason that the Court will have to pass an appropriate order one dependent upon the corrected description of the suit property so as to make it effective. In that light of the matter, I do not see any merit in the reliance place upon **Life Insurance Corporation of India (supra)** by the petitioners.

7. It is a settled position of law that multifariousness, is to be avoided wherever possible, considering which, I do not see any reason to interfere in the order impugned in this petition. The petition is dismissed. No costs.

JUDGE