

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

WRIT PETITION NO.5448 OF 2018

Smt. Kusumbai Ninaji Bore .Vs. Pramod Sohanlal Chandak and others

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

Court's or Judge's Order

Shri A.C. Dharmadhikari, Advocate for the petitioner.

Shri Rohan Deo, Advocate for the respondent Nos.1 and 6.

CORAM : ANIL S. KILOR, J.

DATED : 13/07/2023

1. Heard.

2. The orders dated 09.07.2018 passed below Exh.187 and Exh.188 in RCS No.32 of 2011 by the Jt. Civil Judge Jr. Dn., Malkapur, are under challenge in this writ petition.

3. The learned trial Court vide impugned orders allowed the application Exh.187 moved by the defendant No.1 and Exh.188 moved by the defendant Nos.2 to 7 under Order VI, Rule 17 of the Civil Procedure Code (CPC) for amendment of written statement.

4. The petitioner filed a suit for declaration and permanent injunction against the partnership firm M/s Hariom Ginning and Pressing Company through one of the partners. The defendant No.1 appeared in the said suit and

filed written statement and pointed out that, the other partners were not made party who are necessary party and accordingly, the defendant Nos.2 to 7 who are the partners of the M/s Hariom Ginning and Pressing Company were added as party to the plaint on 30.09.2013.

5. Thereafter, the defendant Nos.2 to 7 filed the written statement on 30.04.2014 and in the said written statement, it was pointed out that the defendant No.8 who is the owner of the adjoining land is also necessary party. However, in the meantime, on 22.07.2013, the PW1 filed an affidavit in lieu of evidence and thereafter, PW2 filed an affidavit on 30.04.2014. Thus, it is clear that after filing of the evidence by PW-1 on 22.07.2013, the trial had commenced.

6. In the year 2017, the plaintiff moved an application for addition of party which was allowed and the defendant No.8 was added as party. Thereupon, he filed his written statement on 18.01.2018.

7. The defendant Nos.1 to 7 filed two separate applications for amendment of the written statement on 15.01.2018, i.e. prior to filing of written statement by defendant No.8. From the proposed amendment, it appears that the pleadings made in the proposed amendment are

already there in the written statement, however, to further clarify the same, the proposed amendment was sought.

8. From the above referred facts, it is evident that, after the commencement of the trial, the defendant No.8 was added at the instance of plaintiff and he filed a written statement on 18.01.2018 i.e. after the amendment applications were filed by the defendant Nos.1 to 7.

9. In the suit, the cross examination of PW-2, 3 and 4 is pending since 30.04.2014.

10. As I have recorded that, the defendant No.8 was added after the commencement of the trial at the instance of the plaintiff, I do not find any error committed by the learned trial Court in allowing the application for amendment preferred by the defendant Nos.1 to 7 in the given facts and circumstances of the present case.

11. In the circumstances, I do not find any merit in the present writ petition. Accordingly, the writ petition is **dismissed**.

12. At this stage, Shri Dharmadhikari, learned counsel for the petitioner prays to expedite the trial considering the age of the plaintiff and the fact that, the suit is pending since year 2011.

13. The trial Court is accordingly directed to expedite the trial and decide the same within nine months from today. Both the parties have undertaken to co-operate the trial Court in the deciding the matter within stipulated period.

JUDGE