

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

WRIT PETITION NO.355 OF 2023

THE GANDHI NAGAR CO-OP HOUSING
 SOCIETY LTD. A CO-OPERATIVE Housing
 Society, duly registered under the
 provisions of the Co-operative Societies
 Act, having its Regd. No.753, and
 registered office at Gandhi Nagar, Nagpur,
 through its authorized signatory Mr.
 Shivdas Arjun Wase
 R/o “SureshNiwas”, Navnath Housing
 Society, Narendranagar, Nagpur – 440015.

**.. Original plaintiff/
 Appellant**

Versus

- 1 Baburao Sadashiv Dhawale (Dead)
 (Ori. Defendant No.1 /Respondent no.1) .

- 2 Marotrao Sadashiv Dhawale (Dead)
 (Ori. Defendant No.2 /Respondent no.2)

- 2-A Shantabai Maottrao Dhawale
 aged Adult, Occ- Household
 (LRs. Ori. Defendant No.2A/respondent
 no.2A)
- 3 Vasudeo Maraotro Dhawale
 Aged Adult, Occ. Service
 (Ori. Defendant no.3/Respondent no.3)

- 4 Ku. Nalini Marotro Dhawale
 aged Adult, Occ. Housewife,
 (Ori. Defendant No.4/Respondent no.4)

5. Manikrao Sadashiv Dhawale
 aged Adult, Occ. Private,
 (Ori. Defendant No.5/Respondent NO.5)

6. Prakash Manikrao Dhawale
 Aged Adult, Occ.Private,
 (Ori. Defendant No.5/Respondent no.5)

7. Madhav Manikrao Dhawale
Aged Adult, Occ.Private,
(Ori. Defendant No.7/Respondent no.7)
8. Suresh Manikrao Dhawale
aged Adult, Occ. Private
(Ori. Defendant No.8/Respondent No.8)
9. Vilas Manikrao Dhawale
aged Adult, Occ Private
(Ori. Defendant no.9/Respondent no.9)
10. Ku. Laxmi Manikrao Dhawale
Aged Adult, Occ, Privated
(Ori. Defendant no.10/Respondent no.10)
11. Ku. Hemlata Manikrao Dhawale
Aged Adult. Occ-Private

All 1 to 11 R/o Babulkheda, Nagpur.
(Ori. Defendant no.11/Respondent no.11)
12. Bala Sadashiv Dhawale (Dead)
(Ori. Defendant no.12/Respondent no.12)
13. Vijay Bala Dhawale
Aged Adult, Occ- Not Known
(Ori. Defendant no.13/Respondent no.13)
14. Sunil Bala Dhawale
Aged Adult, Occ- Not Known
(Ori. Defendant no.14/Respondent no.14)
15. Anil Bala Dhawale
Aged Adult, Occ- Not Known
(Ori. Defendant no.15/Respondent no.15)
16. Sanjay Bala Dhawale
Aged Adult, Occ- Not Known
(Ori. Defendant no.16/Respondent no.16)
All 12 to 16 R/o Dieticin Main Hospital
Durg, Chattisgarh.

- 17 Manavseva Co-op. Housing Society,
Nagpur, through its President
(Ori. Defendant no.17/Respondent no.17)
18. The Sub-Registrar No.1,
Collectorate Compound, Nagpur
(Ori. Defendant no.18/Respondent no.18)
19. The Amaratrupti Co-op. Housing Society,
Nagpur through its President and
Secretary, Dhantoli, Nagpur.
(Ori. Defendant no.19/Respondent no.19)
20. The Popular Co-op. Housing Society,
Nagpur, through its President and
Secretary, Dhantoli, Nagpur
(Ori. Defendant no.20/Respondent no.20)
- 21 The Lahiri Kripa Co-op. Housing Society,
Nagpur, through its President and
Secretary, Dhantoli, Nagpur
(Ori. Defendant no.21/Respondent no.21)
- 22 Om Construction Co.Ltd. Nagpur,
through its partner Vidyasagar Vinayak,
Katarpawar, R/o 66, M.B.Estate Akar
Nagar Majarana Builder, near Maharana
Nagar, Katol Road, Nagpur
(Ori. Defendant no.22/Respondent no.22)
- 23 Smt. Shushila Ramkrishna Bhoyar
Aged Adult Occ- Agriculturist,
R/o Laxmi Nagar, Nagpur.
(Ori. Defendant no.22/Respondent no.22)

Respondents

Mr. Yash Kataria, Advocate for petitioner.

Mr. Rites Badhe, Advocate for respondent Nos.1 to 16 & 23.

Mr. Tejal N. Thombre, Advocate h/f Shri U.A. Gosavi, Advocate for respondent No.17.

None for other respondents.

CORAM : ANIL L. PANSARE J.

DECIDED : 24.01.2023.

ORAL JUDGMENT

(1) **Rule.** Rule made returnable forthwith. Heard finally by the consent of the learned counsel appearing for the parties.

(2) The appellant has taken exception to the order dated 17.10.2022 passed below Ex. 75 (A) in Regular Civil Appeal No. 225/2019 by learned District Judge-14, Nagpur.

(3) It appears that the applicant/appellant before the Appellate Court has filed application (Ex.71) seeking amendment in plaint at the appellate stage. The applicant/appellant found that there is inadvertent mistake in numbering paragraphs. Accordingly, the applicant preferred another application Exh.75 (A) seeking correction in paragraph numbers on the ground that inadvertent/typographical mistake is committed in numbering the paragraphs. The applicant intended to replace paragraphs 4 to 9 by paragraphs 11 D, 11 E, 11 F and 7 to 12.

(4) The non-applicants/respondent nos.1 to 16 and 27 before the Appellate Court have given no objection. It was respondent no.17, who raised objection. However, learned counsel for respondent

no.17, who is present in this Court submits that he has now no objection, as keeping the matter pending on this trivial count will cause unnecessary delay. It is informed that other respondents though served have not raised any objection before the Appellate Court. The learned Advocates present before this Court submits that contesting parties are before the Court. Thus, it is suggested that no prejudice will be caused to other respondents if the order is passed in their absence. On the strength of such suggestion, the Court proceeds further.

(5) The appellate Court was of the view that the applicant/appellant intends to amend the application. He has referred to Order VI Rule 17 of the Code of Civil Procedure, which deals with the amendment in the pleadings. The Court accordingly opined that pleadings only and not paragraph numbers could be amended. The learned appellate court was also of the view that the application ought to be verified by the appellant and ought to be supported by an affidavit.

(6) The learned counsel for the petitioner, however, rightly submitted that the request was only for corrections in

paragraph numbers. There was no need to file an affidavit.

(7) To my mind, Section 151 of the Code of Civil Procedure. Section 151 of the Code of Civil Procedure gives inherent power to the Court to make such orders as may be necessary for the ends of justice. It is well settled that the Court has inherent power to pass appropriate order unless prohibited by the Code. The learned Appellate Court was of the view that pleadings only could be amended under Order VI Rule 17 of the Code. In other words, it was of the view that paragraph numbers could not be amended. In the circumstance, if not under Order VI & Rule 17 of the Code, the inadvertent/typographical mistakes could be allowed to be corrected under Section 151 of Code.

(8) For the aforesaid reasons, Writ Petition is allowed. The order dated 17.10.2022 passed below Ex. 75 (A) in Regular Civil Appeal No. 225/2019 by learned District Judge-14, Nagpur is quashed and set aside. Application Ex.75 (A) stands allowed. Paragraph numbers be corrected within three working days.

(9) Rule is made absolute in the above terms.

(10) Parties to act on an authenticated copy of this order.

[ANIL L. PANSARE J.]

Ambulkar

Signed By: MUKUND
LAXMANRAO AMBULKAR
Private Secretary

Signing Date: 22/11/24 ~~PAGE 7 of 7~~