

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

WRIT PETITION NO. 1003 OF 2023

Gajanan Narhari Dhondge__ Vs. __ Nitim Raghunath Dhoke and ors

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

Court's or Judge's orders

Mr. R.N.Ghuge, Advocate, for the petitioner

CORAM : AVINASH G. GHAROTE, J.
DATE : 13/02/2023

1] Heard Mr. Ghuge, learned counsel for the petitioner.

2] The petition challenges the order dated 3.11.2022 which rejects the application for amendment filed by the petitioner/defendant at the stage when the arguments of the plaintiff was over.

3] The learned trial Court has rejected the application on the ground that the petitioner/defendant seeks to raise a plea under Section 69 of the Partnership Act on the basis of the evidence which has come on record, which being in absence of pleadings would not be permissible. It is trite position of law that if the evidence discloses a certain state of affairs regarding non-compliance of the requirement of Section 69 of the Partnership act, that being a legal plea based upon the satisfaction of the requirements of the provision, can always be permitted to be raised even if there is no pleading in the written statement, as the satisfaction of

the requirement thereof, has to be ascertained from the material on record and if there is material enough to satisfy the Court regarding the satisfaction, absence of pleadings cannot come in the way of the Court to consider the applicability of Section 69 of the Partnership Act.

4] That being the position, I do not see any reason to interfere in the impugned order. The Petition is dismissed. No costs.

JUDGE

Rvjalit