



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

WRIT PETITION NO. 8246 OF 2022
(VIVEK NARHAR OKE..VS..MOHAMMAD IQBAL LAKHANI)

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

Court's or Judge's orders

Shri S.S.Joshi, Advocate for Petitioner.
Shri J.J.Chandurkar, Advocate for Respondent.

CORAM : ANIL S. KILOR, J.
DATED : NOVEMBER 02, 2023.

1. Heard.
2. The order dated 10/10/2022, passed below Exh.85 by the Civil Judge Junior Division, Chandur Railway in Regular Civil Suit No.7 of 2015, allowing the application filed under Order VI Rule 17 of the Code of Civil Procedure (CPC), is under challenge in this writ petition.
3. The respondent filed a suit for ejectment and possession under Sections 15 and 16(1)(g) of the Maharashtra Rent Control Act, 1999 for recovery of arrears of rent etc. against the petitioner. In the said suit the respondent filed an application for amendment to the following effect :

“1. The plaintiff wants to amend the plaint as under:

Proposed amendment

Add after para 7 in the plaint as under:

“7-a) It is submitted that taking advantage of the lock down on account of the Covid-19 pandemic during the period of March 2020 to December 2021, the defendant has surreptitiously without the consent of the plaintiff erected structure on the plaintiff's open land in the southern side adjoining the suit house and on the northern side on both

sides of the bath room an latrine. The said erected structures are of permanent nature. The defendant is liable to remove the same. The plaintiff submits that he is also entitled decree of eviction and possession against the defendant on this ground also as he has unlawfully erected the said structures on the plaintiff's land."

Add at the end of prayer (a) as under :

"and remove entire structure erected by him on the open land around the suit house and deliver possession of the open land."

2. The proposed amendment has become necessary on account of subsequent events happened during the pendency of suit. That defendant has erected permanent structure on the open land of the plaintiff adjoining the suit house. The proposed amendment does not change the nature of the suit. The proposed amendment is necessary for deciding the controversy in this suit and to avoid multiplicity of litigations. Hence, this application. ..."

4. Admittedly, the said application was moved after commencement of the trial i.e. after the evidence of the plaintiff was over. The said application was moved on 28/06/2022 for the events occurred during March 2020 to December 2021.

5. After going through the application the only reason given is to avoid multiplicity of the proceedings however, there is no pleadings as regards due diligence in compliance with the proviso to Rule 17 of Order VI of the CPC. In the application even there are no pleadings explaining the delay in filing the application of not raising the issue after December 2021 till June 2022.

6. This is significant for the reason that the plaintiff's evidence was recorded prior to filing of this application.

7. The learned trial Court only on the ground that to avoid multiplicity of the proceedings allowed the application without recording any finding in respect of compliance of Rule 17 of Order VI of the CPC.

8. In the circumstances, I am of the opinion that the application needs to be decided by the learned trial Court afresh, after hearing both the parties.

9. Accordingly I pass the following order:

- i) The Writ Petition is partly allowed.
- ii) The impugned order dated 10/10/2022, passed below Exh.85 by the Civil Judge Junior Division, Chandur Railway in Regular Civil Suit No. 7 of 2015 is hereby quashed and set aside.
- iii) The matter is remanded back to the Civil Judge Junior Division, Chandur Railway for deciding the application Exh.85 afresh, on its own merits, after hearing both the parties.

The Writ Petition is **disposed of** accordingly. No order as to costs.

JUDGE