

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

**WRIT PETITION NO.201/2023**

**Vasant s/o Parasram Wakode**

**...Versus...**

**Rajabhau s/o Ramchandra Mhaske**

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

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Shri G.N. Khanzode, Advocate for petitioner

**CORAM : AVINASH G. GHAROTE, J.**

**DATE : 02/02/2023**

1. Heard Shri G.N. Khanzode, learned counsel for the petitioner. The petition seeks to challenge the order below Exh.45, dated 12/09/2022, whereby the application for amendment filed by the plaintiff/petitioner, has been rejected.
2. Shri Khanzode, learned counsel for the petitioner submits that the proposed amendment became necessary, as a result of amendment sought by the defendant/respondent having been allowed by this Court by the order dated 02/09/2021 in Writ Petition No.1235/2019 and therefore, the impugned order is required to be quashed and set aside and the application needs to be allowed.
3. The question of any consequential amendment to traverse a plea raised in the written statement by amending the plaint would not arise, as the plea, which is permitted to be raised, is required to be proved by the respondent/defendant,

upon whom the burden is cast. That apart, by the proposed amendment, the petitioner/plaintiff seeks to make averments in respect of an affidavit dated 26/02/2007, claimed to have been sworn by the defendant/respondent. The suit has been filed in the year 2015 and all throughout, the document was in possession and custody of the petitioner/plaintiff, which clearly appears to have been withheld by him.

4. It is a trite position of law, that a party approaching the Court should make a full and candid disclosure all the material with him, which is germane to the plea, which is sought to be adjudicated.

5. In the instant case, the affidavit dated 26/02/2007 is claimed to be sworn and delivered to the petitioner/plaintiff in the year 2007 itself, in pursuance to the agreement to sale/possession receipt, dated 24/01/2007. There is no reason given why the disclosure was not made in the plaint itself, since the petitioner/plaintiff was already having knowledge of the custody of the document, considering which, I am not inclined to interfere in the impugned order. The writ petition is therefore dismissed. No order as to costs.

(AVINASH G. GHAROTE, J.)

Wadkar