



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

**WRIT PETITION NO. 5280 OF 2019**

( Muzaffer Husain Abdeali Education Society vs. RIG Explosive Pvt. Ltd. and others )

*Office Notes, Office Memorandum of Coram,  
appearances, Court's orders of direction,  
and the Registrar's orders.*

*Court's or Judge's order*

Ms.Ramnik Kaur Dadiyal, Advocate for the petitioner.  
Ms.Rama V. Kukday, Advocate for the respondent Nos.1 to 3 & 5.  
Ms.Moushumi Mohanto, Advocate for Respondent No.4.

**CORAM : ABHAY J. MANTRI J.**

**DATE : DECEMBER 13, 2024**

1) The petitioner/Plaintiff Education Society has challenged the order dated 12/03/2019 passed by learned Civil Judge Senior Division, Nagpur, below Exh.77 in Special Civil Suit No.491/2016, thereby rejecting the application to permit the petitioner to amend the plaint.

2) Heard learned Counsel for the parties. Perused the impugned order and record.

3) Ms. Ramnik Kaur, learned Counsel for the petitioner, vehemently contended that the learned trial Court had erred in holding that if the proposed amendment would be permitted to incorporate in the plaint as para 11(A), it would change the nature of the suit and, therefore, rejected the application. In fact, the proposed amendment is necessary to determine the real question in dispute between the parties. She has drawn my attention to the suit, the proposed amendment, and the impugned order and urged the court to allow the present petition.

4) Ms. Rama Kukday, learned Counsel appearing for respondent Nos.1 to 3 and 5, supports the petitioner's claim.

5) On the other hand, Mr. Qureshi, learned Counsel for respondent No.4, strenuously argued that if the proposed amendment is allowed, then certainly it will change the nature of the suit. After considering this fact, the learned Trial Court rightly rejected the application, holding that the proposed amendment would change the nature of the suit. Therefore, she urged for the dismissal of the petition.

6) It is pertinent to note that parties have admitted that the trial has yet to commence, so also issues have not been framed. The matter is posted for hearing of the application at Exh.5. Therefore, in my view, as per the mandate laid down by the Hon'ble Apex Court in the case of ***Life Insurance Corporation of India vs. Sanjeev Builders Pvt. Ltd. 2023(2) ALL MR 333(SC)***, *"all amendments are to be allowed which are necessary to determine the real question in controversy between the parties provided that it does not cause injustice or prejudice to the other side"*.

7) On hearing the rival contentions, the only question that arises for consideration before me is "Whether the proposed amendment, if allowed, would change the nature of the suit? To ascertain the same, it is necessary to consider the facts of the case. *By way of the amendment application, the petitioner wants to add para 11(A) to the plaint. The petitioner does not seek any amendment in the prayer clause, but it has only claimed that para 11(A) is necessary to incorporate in the plaint to determine the real question in controversy between the parties. I have gone through para 11(A) i.e. the proposed amendment. If the*

proposed amendment is allowed, in my view, it would not change the nature of the suit, but it would help to determine the real question in controversy between the parties. Therefore, in my view, the proposed amendment is necessary. Furthermore, it would not cause injustice or prejudice to the other side.

8) Perused the impugned order. In para 8 of the order, the learned trial Judge observed that the suit is not concerned with field Survey No.30 as the suit was filed with respect to field Survey No.31/A and 31/B. Therefore, if the proposed amendment is allowed, then it would change the nature of the suit and unnecessarily implicate the facts regarding field Survey No.30.

9) However, the findings recorded by the learned Trial Court appear contrary to the settled position of law that all amendments are to be allowed, which are necessary to determine the real question in controversy between the parties, provided that it does not cause injustice or prejudice to the other side. By the proposed amendment, the petitioner Education Society wants to incorporate the facts that defendant No.4 is the NRI, who has filed the execution proceeding before the 5<sup>th</sup> Jt. C.J.J.D. Nagpur, pursuant to the settlement, took place between him and defendants Nos.3 and 5 in RCS Nos.712/2011 and 713/2011. The petitioner wants to bring the said facts to record. The learned Counsel for respondent No.4 also admitted that in the suit bearing RCS Nos.712/2011 and 713/2011, the properties in question were Khasra No.31/A and 31/B, and they were not in respect of Khasra No.30. In such circumstances; it seems that the petitioner wants to bring said facts on record, which certainly would not change the nature of the suit, as Khasra No.30 was not in dispute in both the suits, therefore, the

observations made by the trial Court appears contrary to the settled position of the law and facts on record. Therefore, in my opinion, the findings given by the learned trial court are improper and contrary to the mandate laid down by the Hon'ble Apex Court, and they cannot be sustained in the eyes of the law. Based on the said findings, the order cannot stand, and the same is liable to be set aside

10) Considering the above discussion and the law laid down by the Apex Court in the case of **LIC vs. Sanjeev Builders** (supra), I deem it appropriate to allow the petition. Accordingly, the petition is allowed in terms of prayer clause (i), and the prayer in the application in Exhibit 77 is granted as prayed. No order as to costs.

Inform the learned trial Court accordingly.

**( ABHAY J. MANTRI, J. )**

KOLHE