



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

Writ Petition No. 6588 of 2023

Shri Naresh S/o. Daulatrao Barai,
Age : 62 Years, Occupation : Agriculturist,
R/O. Near Dhobi Shop, Wadi,
District : Nagpur.

.... Petitioner

VERSUS

(1) Shri. Dipak S/o. Devindranath Rekhi,
Age : 71 Years, Occupation : Business,
R/o. 159, New Colony,
near Byramji Town, Nagpur.

(2) Shri. Sheshrao S/o. Laxmanrao Katoke,
Aged about 61 years, Occ : Private,
R/o. Shri Krishna Book Depot and
General Stores, Opp. Sheela Complex,
near R. K. Transport, Amravati Road,
Wadi, Nagpur.

(3) Shri. Anil S/o. Daulatrao Barai,
Aged about ___ years, Occ : Unknown,
R/o. Plot no. 91, Kamla Nagar,
Opposite Octroi Post,
Near Dhobi Shop,
Wadi, District : Nagpur.

.... Respondents

Mr. A. R. Dhoble, Advocate for the petitioner
Mr. M. R. Johrapurkar, Advocate for respondent no. 1/caveator
None for respondent nos. 2 and 3

CORAM : ANIL L. PANSARE J.

DATED : 15-07-2024

JUDGMENT

Rule. Rule made returnable forthwith. Heard finally with consent of learned counsel appearing for the parties.

2. The challenge is to the order dated 10-1-2023 passed below Exhibit 154 and also order dated 16-8-2023 passed below Exhibit 161 in R.C.S. No. 1635/2004 by learned Joint Civil Judge Senior Division, Nagpur. By order dated 10-1-2023, the learned Judge allowed the application seeking to amend the plaint. The petitioner-original defendant no. 3, by filing application, Exhibit 161, sought to review the said order. The said application has been dismissed vide order dated 16-8-2023.

3. Learned counsel for the petitioner submits that no opportunity of hearing was given to the petitioner before passing order below Exhibit 154.

4. The order impugned however, indicates that learned Advocate for the petitioner – defendant, who was appearing before the trial Court was absent, so also the defendant and, therefore, their arguments could not be heard. Thus despite giving opportunity, the petitioner failed to avail the same. There is, therefore, no substance in

the argument of the petitioner that opportunity of hearing was not given.

5. So far as merit is concerned, the learned trial Court, while dealing with the application seeking amendment, has observed that the suit has been instituted for specific performance of contract and other consequential reliefs. The respondent – defendant filed application to bring on record subsequent developments. According to him, pending suit, the petitioner has taken forcible possession. Accordingly, the defendant sought consequential relief of restoration of possession.

6. The petitioner opposed the application by filing reply stating therein that respondents evidence has been completed, so also of defendant no. 1. The amendment having been sought after commencement of trial ought not to be allowed.

7. The trial Court, taking note of the fact of provisions of Specific Relief Act, 1963 (for short 'Act of 1963) which provides that unless specific relief is claimed, the same cannot be granted and further relied upon the proviso to Section 22 of the Act of 1963 to hold that it entitles the plaintiff to amend the plaint at any stage of the proceedings.

8. This finding has been supported by the learned counsel appearing for the respondent by relying upon the judgment passed by the coordinate Bench of this Court in the case of *Lalchand s/o Sheetalsing Pardeshi died through heirs and L.Rs. Ashabai w/o Lalchand Pardeshi and ors. Vs. Ramkrishna s/o Kashinath Jadhav and ors. [2003(4) Mh.L.J. 119]*. This Court has held that Section 22 of the Act of 1963 has overriding effect over the provisions contained in Order VI Rule 17 of the Civil Procedure Code and, therefore, the plaintiff has a right to seek amendment claiming possession in the suit for specific performance of contract and the Court has no option but to allow the said amendment. The result of the petition is expressed in following terms.

“12. In the result, the following conclusions emerge :

- (i) that, Section 22 of the Specific Relief Act, 1963, overrides the provisions contained in the proviso to Rule 17 of Order VI of the Civil Procedure Code.
- (ii) the court has no jurisdiction to reject an application filed by the plaintiff seeking to amend the plaint for claiming relief of possession in a suit for specific performance of contract of immovable property by placing reliance on the proviso to Rule 17 of Order VI of Civil Procedure Code.
- (iii) the court cannot refuse such an amendment on the ground that the amendment application has been filed after the commencement of the trial, though the

plaintiff could have with due diligence filed the same prior to the commencement of the trial."

9. The law as laid down above leaves no room to the Court to refuse an application seeking amendment even after commencement of trial. Thus, there is no reason to interfere with the order dated 10-1-2023 passed by the Court below. Consequently, there arises no question to review the said order. The trial Court, therefore, has rightly refused to review the order passed below Exhibit 154. There is no merit in the petition. The petition is dismissed.

10. Rule is discharged.

(Anil L. Pansare, J.)

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