



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

WRIT PETITION NO. 370 OF 2024

(GANDHI NAGAR COOP. HSG. SOC. LTD...VS..BABURAO SADASHIV DHAWALE THR. LRS. & OTH.)

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

Court's or Judge's orders

Shri Gopal Sawal, Advocate for Petitioner.
Shri N.S.Bade, Advocate for Respondent No.6.

CORAM : ANIL S. KILOR, J.
DATED : JANUARY 19, 2024.

1. The order dated 23/11/2023 passed below Exh.71 by the District Judge-12 and Additional Sessions Judge, Nagpur rejecting the application for amendment to the plaint at the appellate stage is under challenge.

2. After going through the application for amendment Exh.71 filed in Regular Civil Suit No. 225 of 2019 seeking thereby to amend the plaint it is evident that the facts which the plaintiff wants to bring on record are not the subsequent events but these are the facts which were in existence and the petitioner had complete knowledge about it at the time of filing of the suit or after filing of the counter claim by the defendant and before passing of the judgment. In the circumstances, it is necessary to look into the aspect of due diligence and the pleadings in that respect to find out why such application was not moved at the stage of the suit or before decision in the suit.

3. No satisfactory explanation has been offered or pleaded in the application. The only justification given is that at the time of drafting the appeal it was realized that the amendment to the plaint is required. However, this explanation is not sufficient and it does not satisfy the requirement of the proviso to Rule 17 of Order 6 of the Code of Civil Procedure.

4. In the circumstances, in absence of any pleadings as regards due diligence or any satisfactory explanation for not making any such prayer before the trial Court, I am not inclined to interfere with the impugned order.

5. Accordingly, the writ petition is **dismissed**. No order as to costs.

6. Needless to mention that the learned lower appellate Court shall not get influenced by any of the observations made in the order while deciding the appeal.

JUDGE