



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

**WRIT PETITION NO.2593/2024**

Bhagwant s/o Vitthalrao Brahmanwade

Vs.

Rekha @ Malati Ramchandra Bavistale and another

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

Court's or Judge's orders

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Shri Y.D. Shukla, Advocate for petitioner

**CORAM : SMT. M.S. JAWALKAR, J.**  
**DATED : 05/02/2025**

Heard learned Counsel for the petitioner.  
None for the respondents.

2. The present petition is filed challenging the order dated 12.02.2024 below Exhibit 69 in Special Civil Suit No.87/2019 passed by 9<sup>th</sup> Civil Judge Senior Division Amravati. The plaintiff has filed application under Order 6 Rule 17 read with Section 151 of the Code of Civil Procedure.

3. It was the case of the plaintiff that he has filed suit for specific performance of contract and alternatively for refund of earnest amount. It is the case of plaintiff that he paid Rs.2,00,000/- in cash at the time of agreement to sale dated 17.01.2019 and Rs.1,00,000/- through cheque. However, defendant No.1 has stated during her evidence that she never received amount of Rs.1,00,000/- as she has not deposited the cheque for encashment and thereafter defendant No.1 has further produced original cheque on record. It is contended that in view of this

subsequent development, it is necessary to amend the plaint. The application is opposed by defendant. The learned Trial Court rejected the same.

4. In my considered opinion, the learned Tribunal duly considered all aspects, it is not the case that after producing original cheque by the defendant, the petitioner got knowledge about non encashment of cheque. In fact, in additional pleadings along with written statement, the defendant specifically pleaded that the said cheque of Rs.1,00,000/- was not encashed as plaintiff asked to the defendant not to present the cheque as she was not having sufficient amount in the account and that amount will be paid at the time of sale-deed. However, no such amount was received.

5. In view of this specific additional say along with written statement, the petitioner was well aware that said amount was not encashed. In fact, it is his duty to verify his account. Moreover, in the evidence of plaintiff, he has deposed that as cheque was not encashed, the amount of Rs.1,00,000/- paid in cash. In view of this statement, the proposed amendment is contrary to his pleadings as well as affidavit. Moreover, there are no subsequent events as alleged as the petitioner was well aware of this fact.

6. The learned Counsel for petitioner relied on *Ramesh Kumar Agrawal Vs. Rajmala Exports Private Limited and others (2012) 5 SCC 337*, however, the

facts are distinguishable in the matter. The application for amendment was moved immediately after filing of the plaint and before commencement of trial seeking to explain the same by giving details as how payment was made. However, facts involved in the present matter as referred above, are totally different. The Trial is already commenced and petitioner was having knowledge about the facts which are mentioned in the proposed amendment.

7. In view of the above observations, there is no perversity or error in the order dated 12.02.2024 passed below Exhibit 69, by the learned 9<sup>th</sup> Civil Judge Senior Division, Amravati in Special Civil Suit No.87/2019. Accordingly, the petition is dismissed. No order as to the costs.

**JUDGE**

*R.S. Sahare*