



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

WRIT PETITION NO.4275 OF 2025

RAVINDRA S/O PRALHAD PANDE

VERSUS

ANNA S/O CHINKAJI GADKAR

Office Notes, Office Memoranda of Coram, Appearances, Court's orders or directions and Registrar's orders	Court's or Judge's orders
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Mr. T.S. Deshpande, Advocate for Petitioner.

Mr. S.A. Walde, Advocate for Caveator/Respondent.

CORAM : PRAFULLA S. KHUBALKAR, J.

DATED : 12th NOVEMBER 2025

PER COURT :-

1. Heard learned Advocate for the petitioner as well as learned Advocate for the respondent.

2. The petitioner's challenge is to the order dated 30.11.2024, passed by the Civil Judge Senior Division, Buldhana, rejecting the application at Exhibit 123, filed the petitioner/plaintiff, for deletion of paragraph No.13 and prayer clause (iv) from the plaint, which are the pleadings with respect to the alternate relief for refund of money and prayer for refund of money.

3. Learned Advocate for the petitioner submits that the plaintiff has filed an application at Exhibit 123, for deletion of the

pleadings in paragraph No.13 and prayer clause (iv), which is an application purported to be under Order 23 Rule 1 of Code of Civil Procedure (in short, "C.P.C."), by which the plaintiff is entitled to relinquish his part of the claim. However, the trial court has considered the said application to be an application under Order 6 Rule 17 of C.P.C. and rejected the application for deletion only because the evidence was started.

4. Learned Advocate for the respondent opposes the petition and submits that the application is rightly considered to be an application for amendment, which cannot be allowed after the evidence is started.

5. While considering the controversy involved in the instant petition, it is clear that the application at Exhibit 123 was filed by the petitioner/plaintiff for deletion of paragraph No.13 and prayer clause (iv), which are with respect to the pleadings about alternate prayer for relief of refund of money and prayer for refund of money. The plaintiff has not mentioned any provision of law. The application at Exhibit 123 ought to have been considered as an application under Order 23 Rule 1 of C.P.C. and even if the same is treated to be an application under Order 6 Rule 17 of C.P.C., the prayer appears to be innocuous causing no prejudice to the other side. The approach of the

trial court in considering the said application as an application for amendment and rejecting the same only because the evidence in the suit has been started, demonstrates an erroneous approach.

6. It is pertinent to note that no prejudice is being pointed out by the trial court while rejecting the application at Exhibit 123. As such, having regard to the factual and legal aspects, the impugned order rejecting the application is unsustainable in law and liable to be quashed and set-aside.

7. Hence, the writ petition is allowed. The impugned order dated 30.11.2024, passed by the Civil Judge Senior Division, Buldhana, on the application at Exhibit 123, is quashed and set-aside. The application filed by the petitioner/plaintiff at Exhibit 123 in Spl.C.S. No.74 of 2011 is allowed.

8. In view of the above, the Writ Petition is disposed of.

9. No order as to costs.

(PRAFULLA S. KHUBALKAR, J.)

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