



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

WRIT PETITION NO.4105/2024

Dnyaneshwar Bajirao Dewalkar

...Versus...

Umesh Namdeorao Shirbhate Through Special Power of Attorney Mayur
Umesh Shirbhate

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

Court's or Judge's orders

Mr. C.R. Kulkarni, Advocate for petitioner

Mr. A.J. Mirza, Advocate for respondent

CORAM : SACHIN S. DESHMUKH, J.

DATE : 14/08/2025

1. The petitioner raises a challenge to the order rendered by the Civil Judge Junior Division, Yavatmal, allowing application under Order VI Rule 17 of the Code of Civil Procedure.

2. The petitioner is defendant in Regular Civil Suit No.25/2020 for injunction. While presenting the plaint, the contention was raised by the plaintiff in a layout, certain part and parcel of the land was left upon for future public interest, so as to start the school and thereafter schedule of the said property was indicated in the plaint.

3. In response to the suit summons, the petitioner presented its written statement resisting the suit claim of the plaintiff relying on the contentions raised in the plaint, as such, prayed for dismissal of the suit.

4. Preceded by same, the plaintiff presented an application under Order VI Rule 17 of the Code of Civil

Procedure so as to delete the expression i.e. for public interest and other statements in relation to reserve for public purpose in the layout map was sought to be deleted. The application so presented was resisted by the petitioner and prayed for rejection of the same.

5. The trial Court after hearing the litigating sides considering the fact that the trial is yet to commence and since issues were not framed, recorded that the proposed amendment would neither change the nature of the suit nor would it cause prejudice to the defendant in the event amendment is allowed. Resultantly, the application, seeking the amendment as prayed by the plaintiff came to be allowed. Aggrieved by the same, the petitioner has approached this Court.

6. I have heard the learned Counsel for the litigating sides at length. The issue in the wake of order VI Rule 17 of the Code of Civil Procedure arises whether the trial Court is justified in allowing the amendment before commencement of the trial and if the same is allowed in that event whether any prejudice by virtue of said amendment would cause to the defendant. Also, whether it would alter the nature of suit or the amendment proposed is mala fide in nature.

7. There is no debate that the amendments are to be allowed generally, provided it does not cause any prejudice to the other side, which is mandatory in the wake of the later part of Order VI Rule 17 of the Code of Civil Procedure. Pertinently, the amendment allowed by the trial Court does not result any prejudice to the petitioner herein. Nevertheless there is no attempt on the part of the plaintiff to withdraw any

clear admission, which confers a right on the other side. Equally, the amendment also does not in any manner change the nature of the suit. Thus, the trial Court has exercised power vested with it strictly in coherence with the settled principles in relation to the governing amendment and eventually has allowed the application presented by the original plaintiff. In the process, no prejudice would be caused in any manner to the petitioner by such amendment. Thus, no error could be noted, much less glaring one in the order under challenge. Resultantly, the writ petition does not deserve any consideration. Accordingly the same is dismissed. No order as to costs.

(SACHIN S. DESHMUKH, J.)