



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR
WRIT PETITION NO.2942/2025

Smt. Kusumbai wd/o Nanaji Morghade and anr. .Vs. Anand Narendra Ahuja and Ors.

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

Court's or Judge's orders

Mr. M. Ateeque, Advocate for petitioners.

CORAM : ANIL L. PANSARE, J.

DATE : JUNE 13, 2025

Heard.

2. Challenge is to order dated 23.04.2025, passed below Exh.-100 by Civil Judge Senior Division, Nagpur in Special Civil Suit No. 685/2015, thereby rejecting the application filed by petitioners – original defendants to amend the written statement and also to file counter claim.

3. So far as counter claim is concerned, counsel for the petitioners is not pressing for order, maybe because the first witness of respondents has been examined and, therefore, time to lodge counter claim has lapsed. So far as amendment to written statement is concerned, the Trial Court noted that request for amendment has been made after eight years of filing written statement and also that the proposed amendment was well within the knowledge of the petitioners.

4. Thus, the Trial Court has taken a view, and rightly so, that unless due diligence is shown, the party will not be permitted to amend the pleadings in terms of proviso to Rule 17 of Order VI of the Civil Procedure Code, 1908.

5. Counsel for the petitioners has invited my attention to clauses of agreement dated 30.08.2013, particularly causes 10 and 11, which is sought to be specifically performed by the respondents. The clauses read thus:

“10] That, the VENDORS do hereby covenant and assure the PURCHASER that they have done no act whereby the property hereby sold is encumbered (Except Mortgage of Bank) in any way or whereby they are debarred from transferring the same by way of sale to the PURCHASER. They further state that they have not transferred the said property by way of gift, sale, mortgage, lease or in any other manner whatsoever to anybody else till date.. They further undertake to indemnify the PURCHASER in case any loss is occasioned to him on any account.

11] That, the Vendors shall deliver vacant and lawful possession of the property to the PURCHASER at the time of balance payment. The VENDORS shall also handover all the original title documents to the PURCHASER at that time.”

6. As could be seen, what is disclosed in aforesaid clauses is that the property under question is mortgaged and that the vendor i.e. petitioners shall deliver vacant and lawful possession of the property to the purchaser-respondent at the time of balance payment. The argument is that the petitioners vacated the land in terms of aforesaid agreement but without receiving payment.

7. This argument goes contrary to what has been agreed between the parties. Counsel for the petitioners submits that balance payment was to be made by the respondents to the bank. In this context, the Trial Court noted that since there is no clause on payment of consideration amount by respondent – plaintiff to the petitioners – defendants for payment of bank loan, the amendment to that effect cannot be allowed being beyond the scope of agreement to sell.

8. Counsel for the petitioners submits that it was within the knowledge of respondent that the property is mortgaged and, therefore, it is obvious that payment that will be received by the petitioner will be paid to discharge the mortgage.

9. To my mind, even if this theory is to be accepted, this was within knowledge of petitioners when they filed the written statement. Counsel for petitioners submits that respondent's witness has, in cross-examination, denied the contents of para 11 of agreement. The argument is, because of such denial, petitioners are now required to put forth in written statement that they have performed their part of agreement by vacating the suit premises and despite doing so, the balance payment has been not given.

10. To my mind, agreement does not stipulate that the petitioners should vacate the premises prior to receiving the balance payment or that vacating premises is precondition to receive the balance payment. Rather what is agreed is that the balance payment is to be given at the time of vacating the possession. That being so, this averment should have been made at the time of filing written statement. The Trial Court has rightly held that the petitioners failed to show any justification that despite due diligence, the amendment sought after eight years could not be brought on record while filing written statement or prior to commencement of the trial. No interference is, therefore, called for in the impugned order. The petition is dismissed. No order as to costs.

(Anil L. Pansare, J.)