



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

WRIT PETITION NO.6035/2023

Washim Urban Cooperative Bank Ltd. Washim through Bank Manager, Akola .Vs.
Rashtriya vaidyak Prasarak Mandal, Akola and Others.

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

Court's or Judge's orders

Mr. P. K. Mohta, Advocate for petitioner.

Mr. A. R. Deshpande, Advocate for respondent.

CORAM : ANIL L. PANSARE, J.

DATE : MARCH 26, 2025

Petitioner – original defendant No.1 is aggrieved by order dated 11.07.2023 passed by Joint Civil Judge Senior Division, Akola in Special Civil Suit No.33/2019, permitting amendment in the plaint filed by respondent No.1 – original plaintiff.

2. Having heard both sides and having gone through the record, it appears that the respondent, by way of amendment, was seeking to correct description of the property. It appears that the respondent, while describing the property in plaint exchanged the boundaries towards South and North and accordingly sought corrections in the boundaries. In addition, the property was described as property situated on sheet No.1/31, which ought to have been 76-B and further Nazul plot was mentioned as plot No. 32 as against 1/31. The Trial Court allowed the amendment. According to the petitioner, this amendment would change the nature of the suit.

3. I do not find any merit in the submissions. Learned counsel for respondent is correct in contending that this amendment was necessary in order to avoid complications in future. In support, he has relied upon the judgment passed by Supreme Court in **Sajjan Kumar Vs. Ram Kishan [(2005) 13 Supreme Court Cases 89]**, in the said case, the amendment to description of property was sought at

the fag end of the trial. Both, Trial Court and the High Court, were against permitting the amendment. The Supreme Court found error in the approach of the Trial Court and the High Court and observed thus:

“5. Having heard the learned counsel for the parties, we are satisfied that the appeal deserves to be allowed as the trial court, while rejecting the prayer for amendment has failed to exercise the jurisdiction vested in it by law and by the failure to so exercise it, has occasioned a possible failure of justice. Such an error committed by the trial court was liable to be corrected by the High Court in exercise of its supervisory jurisdiction, even if Section 115 CPC would not have been strictly applicable. It is true that the plaintiff-appellant ought to have been diligent in promptly seeking the amendment in the plaint at an early stage of the suit, more so when the error on the part of the plaintiff was pointed out by the defendant in the written statement itself. Still, we are of the opinion that the proposed amendment was necessary for the purpose of bringing to the fore the real question in controversy between the parties and the refusal to permit the amendment would create needless complications at the stage of execution in the event of the plaintiff-appellant succeeding in the suit.”

4. As could be seen, in the said case, the plaintiff/appellant carried a blame of being not diligent in seeking amendment, particularly in the light of the written statement filed by respondents - defendants disclosing that there is error in description of property. However, the Supreme Court opined that the proposed amendment was necessary to decide the real question in controversy and refusal to permit the amendment would create complications at the stage of execution in the event of the plaintiff-appellant succeeding in the suit.

5. Similar is the case here. If the respondent is not permitted to correct the description of the property, the parties will face difficulty in execution proceeding, if the respondent succeeds in the

suit. In any case, the amendment as sought cannot be said to be of the nature that would completely change the nature of the suit. That being so, I do not find any error in the order impugned. The petition is devoid of merit. It is dismissed accordingly. No order as to costs.

(Anil L. Pansare, J.)

Kahale