

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY****NAGPUR BENCH : NAGPUR****WRIT PETITION NO.612/2025**

Ramkorbai alias Ramkunwarbai w/o Sheshrao Rathod .Vs. Smt. Shashikalabai
Sakharam Khillare and another.

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

Court's or Judge's orders

Mr. N. B. Kalwaghe, Advocate for petitioner.

CORAM : ANIL L. PANSARE, J.

DATE : FEBRUARY 24, 2025

None appeared for the respondents, though served.

2. On 04.02.2025, following order was passed.

"Heard.

2. The request seeking amendment in the plaint has been refused by the Trial Court, considering proviso to Rule 17 of Order VI of the Civil Procedure Code, 1908.

3. It appears that the petitioner-plaintiff intended to lead secondary evidence by relying on photocopy of unregistered sale deed dated 06.10.1997. In fact, she made an application to lead secondary evidence, which came to be rejected. She challenged the order before this Court in Writ Petition No.1215/2024 and on 02.08.2024, she withdrew the petition seeking permission to file fresh application if such contingency arises in future.

4. According to the petitioner, since the pleadings on secondary evidence were absent, her application was not allowed. In the circumstances, instead of filing application afresh for leading secondary evidence, the petitioner, upon advise of counsel, filed application seeking amendment to the plaint. This development, according to the petitioner, is subsequent to commencement of trial and, therefore, the petitioner will be covered by proviso to Rule 17 of Order VI of the CPC. The Trial Court, however, took contrary view.

5. Issue notice before admission to the respondents, returnable on 18.02.2025.

6. In addition to the usual mode, the petitioner shall serve respondents by all other permissible modes including service by speed post. Steps be taken immediately so that the respondents will have sufficient time to engage counsel to appear before this Court on 18.02.2024. The petitioner may also serve the respondents

through counsel appearing before the Trial Court and file affidavit of service.”

3. As could be seen, request to amend the plaint was made on the basis of subsequent development and, therefore, covered by proviso to Rule 17 of Order VI of the Civil Procedure Code, 1908. The aforesaid contention has been not opposed by the other side inasmuch as none appeared for the respondents, though served.

4. If that be so and for the reasons stated in order dated 04.02.2025, amendment sought ought to have been allowed by the Trial Court. The petition, therefore, deserves to be allowed in order to give an opportunity to the petitioner – original plaintiff to prove his claim. Hence, following order is passed.

ORDER

- (i) The writ petition is allowed.
- (ii) Impugned order dated 04.10.2024 passed by Civil Judge Junior Division, Chikhli in application below Exh.-65 in Regular Civil Suit No.18/2015 is quashed and set aside.
- (iii) Application Exh.-65 seeking amendment to the plaint is allowed.
- (iv) The petitioner shall carry out amendment within 14 working days from today. Amended copy be served on the other side who shall file consequential amendment to written statement, if so advised, within 14 working days thereafter. The Trial Court shall then proceed further, in accordance with law.
- (v) The writ petition is disposed of in the above terms. No order as to costs.

(Anil L. Pansare, J.)