



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

WRIT PETITION NO.196 OF 2024

1. Shri Rajendra S/o Shalikram Patil, **Petitioners**
aged about 57 years., Occ. Business.
2. Shri Vijay S/o. Shalikram Patil,
aged about 51 yrs., Occ. Business.

Both R/o Hamalpura, Kamptee,
Tah. Kamptee, Distt. Nagpur,

-Versus-

Sultan Ahmad S/o. Mohd. Rashid, **Respondent**
R/o. Nayan Opticals,
Goyal Talkies Road, Kamptee,
Tah. Kamptee, Distt. Nagpur.

Adv. Devidas Chintaman Chahande counsel, for Petitioners.
Adv. D.G. Paunikar for R-Sole.

CORAM : MRS. VRUSHALI V. JOSHI, J.

DATE : 20/06/2025.

JUDGMENT:-

- 1) Heard.
- 2) **Rule.** Rule made returnable forthwith. By consent of the learned Counsel for the parties, the Writ Petition is heard finally.
- 3) In the present petition, the petitioners are challenging an order passed by the 2nd Joint Civil Judge, Junior Division,

Kamptee, rejecting an application for amendment of a plaint in Regular Civil Suit (R.C.S.) No. 58/2020.

4) The petitioners claim to be the rightful and exclusive joint owners of property bearing Municipal S-396 to S-398, out of Sheet No. 5, Block No. 38, Goyal Talkies Road, Kamptee, District Nagpur, admeasuring 1650 sq. ft. This property was purchased by the petitioners through a registered sale deed No.3450, dated August 19, 2005, for Rs. 4,00,000/- from Smt. Kamlabai Wd/o Indrajeet Katnas.

5) The respondent (original defendant), Sultan Ahmad, became a tenant of the petitioners in a portion of this property, i.e., 660 sq.ft. running a business called "Nayan Optical". An attornment notice dated November 24, 2008, was sent to the respondent, informing him of the ownership transfer and directing him to pay rent to the petitioners. The petitioners require the premises for their bonafide needs, specifically for their four educated unemployed sons to start businesses, namely, Sushil Rajendra Patil (MCA IT, 34 years) for a Cyber Cafe; Pratik Rajendra Patil (12th std, 30 years) for Bichayat and Catering; Nikhil Vijay Patil (12th std, 29 years) for a General Stores; and Shashank Vijay Patil (12th std, 27 years) for a Grocery Shop. Consequently, the petitioners filed Regular Civil Suit No. 58/2020 for eviction and recovery of arrears of rent.

6) The respondent filed his written statement (Exh. 15) on

December 5, 2020, denying the title of the petitioners and claiming it in favour of the deceased Kamlabai Katnas and, after her death, in favour of Smt. Uma Thakur. In response to this denial, the petitioners filed an application for amendment of the plaint under Order 6 Rule 17 of the C.P.C. on January 2, 2021 (Exh. 17), seeking to incorporate a new paragraph 12(A) and make changes in the particulars of claim and prayer clause. The respondent filed a reply to the amendment application on January 29, 2021 (Exh. 18). The 2nd Joint Civil Judge, Junior Division, Kamptee, rejected the amendment application vide an order dated September 2, 2023, below Exh. 17 which is under challenge.

7) The learned counsel for the petitioners, Mr. Chahande, contended that the respondent has not paid rent since December 2008, accumulating arrears of Rs. 99,000/- up to February 28, 2019. The counsel argued that the trial judge erroneously rejected the application on "technical grounds", specifically stating that the plaintiffs were aware of the facts from the defendant's reply notice prior to filing the suit. The petitioners assert that the proposed amendment is a direct "outcome of consequence of written statement", where the defendant denied their title and set up title in Smt. Uma Thakur. The stance of the petitioners is that a "notice reply is not pleadings" and can be changed or altered in the written statement.

8) Heard both the parties.

9) This is an application filed by the plaintiff for amendment in plaint. It appears from the record that the plaintiff by way of amendment wants to add some pleadings which are already pleaded by him. He was having knowledge of it, even at the time of filing of suit therefore, the stand taken by the petitioner that after filing of written statement by the defendant, he came to know that the defendant denied the title and ownership over the suit property is not correct. The petitioner was aware about the denial of title. He has pleaded it in his plaint. The trial court has specifically mentioned in the order that in paragraph No.3, it is mentioned about the denial of the title. When the pleadings are already there, there is no need to amend the plaint. There is no subsequent event and it is not the case that the petitioner was unaware of it.

10) The petitioner has relied on the judgment of Hon'ble Apex Court in the case of ***Chakreshwari Construction Ltd. Vs. Manohar Lal*** reported in ***2017 (5) Mh.LJ,195***, wherein in paragraph No.14 the Hon'ble Apex Court has observed as under:-

“The principle applicable for deciding the application made for amendment in the pleadings remains no more res integra and is laid down in several cases. In the case of ***Revajeetu Builders and Developers v. Narayanaswamy & Sons and Others, 2010(1) RCR (Civil) 27 : 2009(2) RCR (Rent) 568 : (2009) 10 SCC 84***, this Court, after examining the entire previous case law on the subject, culled out the following principle in Para 63 of the judgment which reads as under:

"63. On critically analysing both the English and Indian cases, some basic princi-

ples emerge which ought to be taken into consideration while allowing or rejecting the application for amendment:

(1) whether the amendment sought is imperative for proper and effective adjudication of the case;

(2) whether the application for amendment is bona fide or mala fide;

(3) the amendment should not cause such prejudice to the other side which cannot be compensated adequately in terms of money;

(4) refusing amendment would in fact lead to injustice or lead to multiple litigation;

(5) whether the proposed amendment constitutionally or fundamentally changes the nature and character of the case; and

(6) as a general rule, the court should decline amendments if a fresh suit on the amended claims would be barred by limitation on the date of application.

These are some of the important factors which may be kept in mind while dealing with application filed under Order 6, Rule 17 . These are only illustrative and not exhaustive."

11) The principle applicable for deciding the application are mentioned in paragraph No.14 of the said judgment. As the pleadings are already there in the petition, the amendment is not relevant for deciding the question of tenancy and availability of alternate accommodation. The facts proposed in the amendment were within the knowledge of the petitioner.

12) The stand taken by the defendant in his Written Statement cannot be the ground to plead against the facts which are already on record. Therefore, the authority which is cited by the petitioner is not helpful to the petitioner. The reliance is placed by the plaintiff on the judgment passed by this Court in the case of *Navinchand Tilakchand Shah and anr. Vs.Bhikulal Ramdulare Gupta and ors reported in 2025(2)Mh.L.J.293*, wherein it is observed by this Court that merits of the amendment cannot be decided at the time of deciding the amendment application. As the pleadings are already there in the plaint and it is within the knowledge of the plaintiff, the trial court has rightly rejected the application observing that the amendment is not necessary. Hence, the writ petition stands **dismissed**.

13) Rule is discharged.

(MRS.VRUSHALI V. JOSHI, J)