



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

WRIT PETITION No.5406 OF 2024

(Dr. Rajendra s/o. Gopikisanji Kalantri Vs. Smt. Pratibha w/o. Shivshankar Kaushik 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. R.M. Bhangde, Advocate for petitioner.
Mr. M.V. Raut, Advocate for respondent No.2.
Mr. R.J. Mirza, Advocate for respondent No.3(iv).
Mr. A.S. Deshpande h/f. Mr. A.H. Lohiya, Advocate for respondent
Nos.1,6 and 7.
Mr. S.A. Butala, Advocate for respondent No.5.

CORAM : **R.M. JOSHI, J.**

DATE : **9th JUNE, 2025.**

1. This petition takes exception to the order dated 10.7.2024, passed below Exh.-233 in Special Civil Suit No.184/2010, whereby the application filed by the petitioner/defendant No.8 under order VI rule 17 of the Civil Procedure Code for amendment to the written statement came to be rejected.

2. The facts as they appear from the record indicate that there is no dispute that the petitioner is the defendant in Special Civil Suit No.184/2010. There is further no denial of the fact that M/s. Bharat Petroleum Corporation Limited filed R.C.S. No.284/2013, wherein petitioner as well as some of the defendants in Special Civil Suit No.184/2010 were party defendants. This suit came to be dismissed by the Civil Court by Judgment and Decree dated 8.5.2024. However, observations were made in the said judgment with regard to the transaction between the petitioner and

the defendant Nos.3 to 4 therein and acknowledgment of the same by M/s. Bharat Petroleum Corporation Limited.

3. In this backdrop application Exh.-233 came to be moved for seeking amendment to the written statement to incorporate the subsequent events which have occurred after filing of the written statement.

4. Learned trial Court rejected the said application by holding that the contentions of the petitioner/original defendant No.8 with regard to Special Civil Suit No.184/2010 being hit by *res judicata* is not acceptable.

5. Learned counsel for the petitioner submits that observations made by trial Court are premature, since at the time of passing order on amendment application the merit of the amendment cannot be considered and decided and decided.

6. Learned counsel for the contesting respondents supported the impugned order. It is his contention that if this Court is of the view that the order impugned is not sustainable, appropriate direction be issued for expeditious disposal of Special 184/2010.

7. Perusal of Application Exh.-233 indicates that the defendant No.8 was seeking amendment to the written statement while incorporating the factum of passing of the judgment and decree dated 8.5.2024 in R.C.S. No.284/2013. Prima facie, there is no dispute about the fact that the subject matter of two suits is same. In any case it cannot be said that the events sought to be incorporated in the written statement are totally irrelevant or not germane for the decision of the suit before the trial Court.

8. As rightly canvassed on behalf of the petitioner, trial Court has passed the impugned order as if it was deciding the correctness or otherwise of the contention of the petitioner/original

defendant No.8 with regard to bar of *res judicata*. At this stage of deciding application for amendment the Court was not required to go into the merit thereof. It is only after the amendment is allowed and if the said objection is pressed into service, it was open for the Court to pass appropriate order in this regard.

9. In view of above, since the amendment is prima facie relevant for the decision of the case, impugned order cannot be sustained. Consequently, Application Exh.-233 stands allowed.

10. Amendment be carried out within a period of four weeks.

11. Learned counsel for the petitioner given consent for expeditious disposal of Special Civil Suit No.184/2010.

12. Since the said suit is pending for last about 14 years, the suit is expedited it be disposed of within a period of six months from today.

(R.M. JOSHI, J.)