



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

WRIT PETITION No.1345 OF 2025

(Sunil Motilalji Kalantri Vs. Sau.Nilima Sharadrao Gayki)

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

Court's or Judge's orders.

Mr. S.M.Vaishnav, Advocate for petitioner.
Mr. G.N. Akolkar, Advocate for respondent.

CORAM : PRAFULLA S. KHUBALKAR, J.
DATE : 06th AUGUST, 2025.

1. Heard Mr. S.M. Vaishnav, learned counsel for the petitioner and Mr. G.N. Akolkar, learned counsel for the respondent.
2. The petitioner challenges the order passed by the trial Court rejecting the application for amendment.
3. The petitioner is original plaintiff who had filed the suit for specific performance of contract with alternate prayer for refund of amount. During the pendency of the suit, plaintiff filed application under order VI Rule 17 of the C.P.C. seeking to withdraw the relief of specific performance of contract and amendment to that extent is prayed for. This application is rejected by the trial Court by observing that the amendment if allowed, will change the nature of the suit. It is submitted by

the learned counsel for the petitioner that in view of pleadings on record the plaintiff wants to restrict the claim for refund of money only and is not interested to continue with the relief of specific performance of contract.

4. Learned counsel for the respondent opposes the petition and submits that the plaintiff was required to contest the suit as a whole and restricting the prayer to refund of money will amount to change in the nature of the suit.

5. It has to be seen that the plaintiff has filed application for amendment of plaint to delete the prayer for specific performance of contract and as a result, the plaintiff's claim will be restricted to refund of money only. This amendment will not cause any prejudice to the defendant. I am of the view that this amendment will not change the nature of the suit in any manner and the impugned order observing that the proposed amendment amounts to change the nature of the suit is therefore unsustainable. Hence, the petition needs to be allowed.

6. Writ Petition is allowed. The impugned order dated 25.2.2025, passed by the trial Court in Special Civil Suit No.423/2024 is quashed and set aside. The application filed by

the petitioner for amendment at Exhibit-16 is allowed. In view of the controversy involved, the trial Court is directed to decide the suit expeditiously.

7. No order as to costs.

(PRAFULLA S. KHUBALKAR, J.)

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