



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

WRIT PETITION NO. 3918 OF 2025

Mohan Vyankatesh Agwan, Aged: 70 years, Occ:Private,
R/o Flat no.101, Sai Krupa Apartment, Plot no.185,
Shastri Layout, Khamla, Nagpur.

PETITIONER

VERSUS

1. Vinay Daulat Yenurkar, Aged: 53 years, Occ: Business.
2. Niranjana Daulat Yenurkar, Aged: 50 yrs, Occ: Business.

Both R/o 48, Adhyapak Layout, Behind Anusaya Mangal
Karlaya, Mangalmurthy Square, Hingna Road T Point, Nagpur.

3. Nagpur Improvement Trust, Through its
Chairman, Station Road, Sadar, Nagpur.

RESPONDENTS

Shri U.M. Aurangabadkar, counsel for the petitioner.
Shri A.A. Mardikar, counsel for the respondent nos.1 and 2.
Smt. S.S. Jachak, counsel for the respondent no.3.

CORAM : PRAFULLA S. KHUBALKAR, J.

DATE : APRIL 09, 2026

ORAL JUDGMENT

RULE. Rule made returnable forthwith. Heard finally with consent of the learned counsel for the parties.

2. By this petition, the petitioner-original plaintiff challenges the order dated 20.06.2025 passed by the trial Court in Regular Civil Suit no.89 of 2018 allowing an application for amendment of the written statement, which is undisputedly filed after commencement of trial.

3. Assailing the impugned order, the learned counsel for the petitioner submitted that the defendants in the suit have filed the application for amendment at Exhibit 64 after the plaintiff was cross-examined in the suit and without demonstrating any due diligence, the application is entertained by the trial Court. He submitted that the proposed amendment changes the nature of the pleadings and causes serious

prejudice to the rights of the plaintiff and the amendment application therefore deserved to be rejected.

4. Opposing the petition, Shri A.A. Mardikar, learned counsel for the respondent nos.1 and 2 and Smt.S.S. Jachak, learned counsel for the respondent no.3 have justified the impugned order.

The learned counsel for the respondent nos.1 and 2 submitted that the amendment application is filed by the legal representatives of the original defendant no.2 and although the proposed amendment mentions certain new facts, the same are relevant for deciding the actual controversy involved in the suit. He also submitted that the respondent nos.1 and 2, who are the defendant nos.2A and 2B in the civil suit, were not earlier aware about these new facts and hence these facts need to be pleaded, which are relevant for deciding the controversy and therefore the application for amendment was filed.

5. While considering the controversy involved, it has to be seen that undisputedly the application for amendment is filed after the evidence of the plaintiff is over. Further, a perusal of the application for amendment shows that the defendant no.2A and 2B have not mentioned any reasons for not filing the amendment application before commencement of the trial. Even the trial Court while passing the impugned order has failed to decide the issue about due diligence on the part of the defendant nos.2A and 2B. It has to be noted that only because the defendant nos.2A and 2B claim that they got knowledge about certain facts after the death of the original defendant no.2, they cannot claim as of right to introduce

amendment entirely changing the nature of the pleadings. The trial Court has failed to decide the objection raised by the plaintiff to the amendment application on the point of change in nature of the pleadings, which was specifically raised by the plaintiff in his reply to the amendment application. Further, the trial Court also failed to record its findings on the issue of due diligence. The reasoning recorded by the trial Court that the plaintiff would get an opportunity to rebut the contentions and therefore no prejudice is likely to be caused to him, without considering the vital issue of due diligence and the objection raised by the plaintiff about change in nature of pleadings, renders the impugned order unsustainable in law.

6. A perusal of the impugned order reveals that the trial Court has not properly appreciated the objections raised by the plaintiff to the amendment application and therefore, it is necessary to remand the matter to the trial Court for deciding the amendment application afresh. Hence, the following order is passed:-

- I. The writ petition is allowed.
- II. The order dated 20.06.2025 passed by the trial Court on the application at Exhibit 64 in Regular Civil Suit No.89 of 2018 is quashed and set aside.
- III. The matter is remitted to the trial Court for deciding the amendment application, Exhibit 64, afresh after giving an opportunity of hearing to the parties concerned. The trial Court is directed to decide the application for amendment expeditiously.

- IV. It is clarified that the trial Court is entitled to decide the application for amendment independently without being influenced by any of the observations recorded in this judgment.
7. Rule is made absolute in aforesaid terms with no order as to costs.

(PRAFULLA S. KHUBALKAR, J.)

APTE