



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

WRIT PETITION NO. 5393 OF 2025

Prashant Shivcharan Kathoke, Age: 43 years, Occ: Business,
R/o Old Kamptee Road, Vaishnodevi Nagar, Plot No.49,
Kalamna Nagpur.

PETITIONER

VERSUS

Nikhil Lalit Sharma, Aged 30 years, Occ: Business,
R/o Shantinagar, Near Water Tank, Lal Nagar, Nagpur-02.

RESPONDENT

Shri Masood Shareef, counsel for the petitioner.
Shri S.S. Sitani, counsel for the respondent.

CORAM : PRAFULLA S. KHUBALKAR, J.

DATE : FEBRUARY 10, 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-defendant challenges the order dated 07.05.2025 passed by the trial Court allowing the application for amendment of the plaint.

3. The petitioner is the original defendant in Special Civil Suit No.1222 of 2022 filed by the respondent for declaration, perpetual injunction and recovery of money. The trial Court had granted the temporary injunction in the suit thereby restraining the defendant from taking forcible possession of the suit property. The said order was challenged by the defendant before the District Judge and upon dismissal of the appeal, the defendant had challenged the said order before this Court in Writ Petition No.3412 of 2023, wherein this Court has allowed the petition and observed that the defendant is in possession of the suit property.

4. During pendency of the suit, the plaintiff filed an application for amendment of plaint *vide* Exhibit 16 seeking to incorporate certain pleadings with respect to subsequent events about disturbance to his possession. The defendant opposed the application, however by order dated 07.05.2025 the application came to be allowed, which is subjected to challenge by way of instant petition.

5. Shri Masood Shareef, learned counsel for the petitioner/defendant vehemently submitted that the application for amendment of plaint deserved to be rejected since the plaintiff wants to incorporate the pleadings which would have the effect of nullifying the order dated 10.11.2023 passed by this Court in Writ Petition No.3412 of 2023 and the entire conduct on the part of the plaintiff does not show any bonafides on his part. He submitted that in the said writ petition, the controversy about the legality of the temporary injunction order was dealt with by this Court and it was categorically observed that the defendant was in possession of the suit property and shall continue to do so during pendency of the suit. He therefore submitted that the contentions sought to be amended by the plaintiff about disturbance to his possession are unwarranted and the application ought to have been rejected. In support of his submissions, he placed reliance on the judgments of the Hon'ble Supreme Court in *Basavaraj Versus Indira & Others* [(2024) 3 SCC 705] and *Life Insurance Corporation of India Versus Sanjeev Builders Private Limited & Another* [(2022) 16 SCC 1].

6. Shri S.S. Sitani, learned counsel for the respondent strongly opposed the petition and submitted that the application for amendment is submitted to place on record the subsequent events which are necessary for deciding the controversy involved in the suit. He submitted that on the basis of the order passed by this Court in Writ Petition No.3412 of 2023, the defendant has dispossessed the plaintiff forcibly and the plaintiff wants to bring on record these material facts which are necessary for deciding the real controversy between the parties. In support of his submissions, he placed reliance on the judgment of this Court in ***Alok Vasantkumar Khandelwal Versus Vasantkumar Hiralal Khandelwal & Others*** [Writ Petition No.7305 of 2024] and ***Pravinchandra & Others Versus Hemantkumar & Others*** [Writ Petition No.2099 of 2023], dated 03.11.2023.

7. While considering the rival contentions, it has to be noted that the application for amendment is filed after the issues are framed and before the commencement of evidence. It has to be noted that the trial Court has granted temporary injunction in favour of the plaintiff and restrained the defendant from taking forcible possession of the suit property. Thus, the order was upheld by the District Court and after the orders were challenged before this Court, the writ petition filed by the defendant was partly allowed and it was held that the defendant is in possession of the suit property. In this background, the plaintiff has filed the application for amendment with contention that taking advantage of the order passed by this Court, the defendant has taken forcible possession of the suit property

and therefore the plaintiff is entitled to amend the suit for claiming possession of the suit property.

8. It is thus clear that the proposed amendment is with respect to the subsequent events which had occurred during pendency of the suit. The plaintiff's contention that the defendant has taken forcible possession only after the order dated 10.11.2023 was passed by this Court is relevant and material for deciding the actual controversy involved in the suit. The parties are entitled to lead their respective evidence on this crucial aspect and considering the controversy involved in the suit, particularly considering the stage of the suit in which the trial has not yet commenced, the plaintiff need to be granted an opportunity to amend the plaint. In this situation, after considering the position of law as laid by the Hon'ble Supreme Court in *Sanjeev Builders Private Limited & Another* (supra), since the amendment is sought before commencement of trial and since it is necessary for effective and proper adjudication of the controversy between the parties, it is required to be allowed.

9. A perusal of the order passed by the trial Court reveals that the trial Court has given due consideration to the most relevant aspect that the plaintiff has proposed to introduce subsequent events which occurred after the filing of the suit and by considering the purport of the provisions of Order VI Rule 17 of the Code, has rightly allowed the amendment application filed by the respondent/plaintiff.

10. I do not find any perversity with the reasoning of the trial Court and hence, no indulgence is warranted under Article 227 of the Constitution of India. The writ petition is accordingly dismissed with no order as to costs. Rule stands discharged.

(PRAFULLA S. KHUBALKAR, J.)

APTE