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

WRIT PETITION NO. 3163 OF 2013

(Smt. Jayshree w/o Vijay Belorkar Vs. Radjabai w/o Shivcharan Gupta)

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

Court's or Judge's orders

Mr. R. D. Dharmadhikari, Advocate for the petitioner.

CORAM : R. Y. GANOO, J.

DATED : JUNE 26, 2013

Heard learned Advocate for the petitioner, who is defendant in Regular Civil Suit No. 29/2011. The respondent herein has filed the said suit for damages against the petitioner. The petitioner filed his written statement on 02/5/2011 and thereafter he had filed an application on 22/10/2012 for amendment of the said written statement. That application was rejected by an order dated 18/12/2013. The learned trial Judge has arrived at a conclusion that a stand of the present petitioner that he was not aware of the institution of Special Civil Suit No. 24/90, which was proceeded ex-parte, cannot be

accepted. This application for amendment is filed after the respondent had filed his evidence on affidavit. That technically mean that the evidence has been commenced. In order to seek amendment, the case of the petitioner must fall within the ambit of proviso to Order 6 rule 17 of the Code of Civil Procedure. In the facts and circumstances of the case, the learned trial Judge declined to accept such a contention.

According to the respondent, the petitioner sold land to the respondent and at the relevant time, respondent did not possess good title and that is how it is the contention of the respondent that fraud is practised by him and hence the suit for damages.

In my view, it is difficult to accept the stand of the petitioner that he was totally unaware about ex-parte decree in Special Civil Suit No. 24/1990.

It was contended by the learned

Advocate for the petitioner that by carrying out amendment in the written statement, the petitioner wanted to state about institution of Special Civil Suit No. 24/1990 and the fact of the ex-parte decree passed against him. In my view, since the suit was, in fact, instituted against the petitioner and ex-parte decree is passed, this fact can be brought on record by the petitioner by making a statement in evidence, which cannot be disputed by the respondent. For that, formal amendment is not required and production of certified copy of the suit and the order passed therein will suffice the matter. No interference is required in the impugned order.

The Writ Petition is dismissed. No costs.

JUDGE

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