

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

WRIT PETITION NO.318/2016

Smt. Sulochana wd/o Diwalu Meshram

..Versus..

Shri Pruthvipal s/o Ramavtar Nishad and others

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

Court's or Judge's orders

CORAM : Z.A. HAQ, J.

DATE : 29.1.2016

Heard Shri S.P. Kshirsagar, advocate for the petitioner.

The petitioner - original defendant no.2 has challenged the order passed by the trial Court rejecting the application (Exh. No.25) filed by her seeking permission to amend the written statement.

The petitioner is seeking to bring on the record the facts in respect of the events which occurred due to death of defendant no.1 on 7th November, 2005. It is undisputed that the trial has commenced. The learned trial Judge has considered the relevant aspects and has recorded in

paragraph nos.2, 3 and 4 of the impugned order that the defendant no.2 has not been able to show that inspite of due diligence it was not possible for her to bring on the record the facts sought to be incorporated by the proposed amendment. The learned trial Judge has rightly rejected the application in view of proviso below Rule 17 of Order 6 of the Code of Civil Procedure.

Shri Kshirsagar, advocate for the petitioner has submitted that the proposition laid down in the judgment given by this Court in the case of *Twist Spin Industries, Mumbai V/s. KMH Enterprises, Chennai* reported in **2009(4) Mh.L.J.685** supports the petitioner - defendant no.2. The submission as made by the learned advocate for the petitioner is not correct. In the reported judgment, the party seeking amendment established that inspite of due diligence it was not possible for it to bring on the record the facts, earlier. In the present case there is no averment in the application to justify the inordinate delay of about 10 years in moving the amendment application.

The impugned order does not suffer from any patent illegality or irregularity and it cannot be said that the learned

trial Judge has committed an error of jurisdiction which necessitates the interference by this Court in the extra-ordinary writ jurisdiction. The writ petition is dismissed. No costs.

JUDGE

Tambaskar.