

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 4284 OF 2016

Mahesh Pandrinath Kotme

.. Petitioner

v/s.

Bhavsahab Raghunath Pable & Ors.

.. Respondents

Mr. M.A. Adenwala for the petitioner
None for the respondents

CORAM : M.S. SANKLECHA, J.

DATED : 22nd AUGUST, 2017

PC.

1. This petition is moved for urgent admission and ad-interim reliefs.
2. This petition challenges the order dated 11th September, 2015 passed by the Civil Judge, Junior Division, Yeola, Dist. Nashik. The impugned order dis-allowed the petitioner's application for amendment of the plaint, which was originally filed for injunction by proposing to add a prayer for specific performance of contract.
3. The impugned order while rejecting the application *inter alia*

records as under :-

“10. In the present case, issues were framed on 27.06.2005. The suit was dismissed for default in the year 2011 but, was restored on 30.04.2011. It has been very long since the commencement of trial. Plaintiff has not submitted any reason which justifies filing of the application at a very belated stage. Plaintiff's case is surely hit by Order 6 Rule 17 proviso.”

4. Mr. Adenwala, learned Counsel appearing for the petitioner invited my attention to the application dated 16th June, 2012 filed by the petitioner for amendment. On perusal of the same, I do not find any reason set out in the application of due diligence on the part of the petitioner, which would warrant non-application of the proviso of Order 6 Rule 17 of the Civil Procedure Code. Mr. Adenwala, also invited my attention to the decision of this Court in ***Bharat Petroleum Corporation Vs. Precious Finance Investment Pvt. 2006 (6) BCR 510*** and in particular paragraph 33(xii), which deals with the application for amendment not to be disallowed on the ground that the same is barred by limitation, as the same is an issue which could be dealt with after allowing the amendment, at the trial. He also relied upon the decision of the Apex Court in the case of ***Rafiq & Anr. Vs. Munshilal & Anr. 1981 AIR 1400***, wherein it has been

held that an innocent litigant should not suffer for the inaction, deliberate omission or misdemeanour of his agent. In the facts of that case, the advocate absented himself in appearing from the Court which led to the appeal being dismissed. Therefore, it was observed that no litigant to suffer for no fault his. Therefore, both the aforesaid decisions do not apply to the facts of the present case.

5. The impugned order does not call for my interference under Article 227 of the Constitution of India.

6. Accordingly, the petition is dismissed.

(M.S. SANKLECHA, J.)