

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

WRIT PETITION NO. 4342 OF 2017

Madhukar Dattaram Monde	...	Petitioner
V/s.		
Vitha Alias Sujata Chandrakant Bane & Ors.	...	Respondents

Mr.Sachin S. Punde for the Petitioner.
Mr.Amrut Joshi i/b. Mr.Atharva A. Dandekar for Respondent No.1.

CORAM : DR.SHALINI PHANSALKAR-JOSHI, J.

DATE : 20th DECEMBER, 2017.

P.C. :

1] Heard learned counsel for the Petitioner and Respondent
No.1.

2] By this petition filed under Article 227 of the Constitution of India, the Petitioner is challenging the order dated 30th March, 2017 passed by Civil Judge Junior Division, Rajapur below Exhibit (164) in Regular Civil Suit No.16 of 2013, thereby rejecting the application filed by the present Petitioner for amendment in the Written Statement under Order-6 Rule-17 of Civil Procedure Code. The Petitioner is Defendant No.8 before the trial Court. According to learned counsel for

the Petitioner, the amendment sought in the Written Statement was only in the nature of clarification, as the Petitioner wanted to prove that there was already oral partition in between the Respondents and the Petitioner.

3] The trial Court has rejected the said application and in considered opinion of this Court rightly so as no explanation was given to show that despite due diligence, the Petitioner could not have raised this matter before the trial Court at an earlier stage. It is pertinent to note that the suit was pending for argument i.e. the hearing of the suit including recording of evidence was already completed and at that belated stage when the amendment was sought, there is clearly a bar of proviso to Order-6 Rule-17 of Civil Procedure Code, which mandates that no application for amendment shall be allowed after the trial has commenced unless the Court comes to the conclusion that inspite of due diligence, the party could not have raised the matter before commencement of the trial.

4] The application filed by the Petitioner before the trial was silent except for making a vague averment that at the time of preparing for arguments, he came across such document. Therefore, the trial

Court was justified in rejecting the said application.

5] The impugned order passed by the trial Court being just, legal and correct in view of the embargo laid down in the proviso to Order-6 Rule-17 of Civil Procedure Code itself, no interference is warranted in the said order, hence Writ Petition stands dismissed.

[DR.SHALINI PHANSALKAR-JOSHI, J.]