

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

WRIT PETITION NO. 13565 OF 2017

Nirmala Manohar Jadhav ... Petitioner
V/s.
Sanjaykumkar Sushikant Walake & Ors. ... Respondents

Mr.Abhijit M. Adagule for the Petitioner.
Mr.A.R. Metkari, A.G.P. for Respondent No.3-State.

CORAM : DR.SHALINI PHANSALKAR-JOSHI, J.

DATE : 20th DECEMBER, 2017.

P.C. :

1] Heard learned counsel for the Petitioner and learned A.G.P.
for Respondent No.3-State.

2] This Writ Petition is preferred challenging the order dated
1st September, 2017 passed by the 3rd Jt. Civil Judge Senior Division,
Kolhapur, thereby rejecting the application Exhibit (110) in the Regular
Civil Suit No. 1391 of 2012, filed by the Petitioner for amendment in
the Written Statement.

3] The submission of the learned counsel for the Petitioner is

that the amendment sought by the Petitioner in the Written Statement was merely of a formal nature. It pertains to giving correct survey number of the suit property and correcting the typographical error in writing the "Plaintiff" instead of "Defendant" and vice-a-versa at some places in paragraph No.13 of the Written Statement. Hence, trial Court should have allowed the same, though it was sought at belated stage.

4] However, in the considered opinion of this Court the trial Court has rightly rejected the said application in view 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 in spite of due diligence, the party could not have raised the matter before commencement of the trial.

5] Here in the case, the trial Court has already commenced the trial. Even cross-examination of the Plaintiff and his Witness No.2 was completed. Moreover, the application filed by the Petitioner for amendment of the Written Statement was also conspicuously silent about Petitioner not being able to raise matter earlier in spite of due diligence. Hence, it cannot be said that the trial Court has committed

any error or much less any illegality in rejecting the petitioner's application. The Writ Petition therefore holds no merit, hence stands dismissed.

6] At this stage, learned counsel for the Petitioner seeks liberty to file a fresh application giving the necessary particulars to show exercise of due diligence. He may be at liberty to do so. The trial Court shall consider the same on its own merit in accordance with law.

[DR.SHALINI PHANSALKAR-JOSHI, J.]