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

WRIT PETITION NO. 811 OF 2018

Maruti Raut	...	Petitioner
V/s.		
Abasaheb Jagtap and anr	...	Respondents

Mr. Abhishek Pungliya, for the Petitioner.
Mr. S. R. Ghanavat, for the Respondent No.1.

CORAM : DR.SHALINI PHANSALKAR-JOSHI, J.

DATE : 1st FEBRUARY, 2018.

P.C. :

- 1] Heard learned counsel for the petitioner and learned counsel for the respondent No.1.
- 2] Rule.
- 3] Rule is made returnable forthwith by consent of parties.
- 4] By this petition filed under Article 227 of the Constitution of India, the petitioner is challenging the order dated 25.9.2017, passed by 6th Additional Judge, Small Cause Court, and Jt. Civil Judge Senior Division, Pune, below Application Exh. 31 in Miscellaneous Application No.514 of 2015.
- 5] Application at Exh.31 was preferred by the respondent

under Order VI Rule 17 of Code of Civil Procedure, for amendment in the Misc. Application No.514 of 2015, which was filed by the respondent for setting aside the order of dismissal of the suit bearing No.1276 of 2012.

6] The said suit was filed by the respondent for cancellation of the sale deed and for injunction. The suit came to be dismissed for default on 25.3.2015 under Order IX Rule 8 of the Code of Civil Procedure. Hence respondent was constrained to file this miscellaneous application for restoration of the suit.

7] In the said application, respondent has given pursis on 13.6.2016, stating that he does not want to lead any evidence. Thereafter, even the petitioner has filed pursis closing his evidence. Then respondent preferred application at Exh.27 on 20.3.2017 for production of the documents, namely, the medical report of his illness and medical certificate of his mother. The said application came to be rejected by the trial Court, vide its order dated 20.3.2017.

8] Thereafter this application at Exh.31 was filed by respondent for amendment in the petition, in order to bring on record that he was suffering from kidney ailment and his mother was

suffering from uterus cancer. Though the present petitioner strongly resisted the said application, trial Court allowed the same, subject to costs of Rs.700/-.

9] Being aggrieved thereby, present petition is preferred contending that whatever respondent could not do directly, he is now trying to do indirectly and hence he should not have been permitted by the trial Court to do so. I find much substance in the submission advanced by learned counsel for petitioner.

10] It is pertinent to note that respondent was having opportunity to prove the cause which prevented him from remaining present when his suit came to be dismissed for default. However, he has not done so and he has filed pursis stating that he does not want to lead any evidence. Thereafter, the petitioner has also closed his evidence. Not only that, even the application filed by the respondent for production of documents, namely the Medical Certificate of his mother suffering from uterus cancer and about his illness, was also rejected.

11] The respondent has not preferred any Revision or Writ Petition against the order of rejection of said documents, which was

passed on 20th March, 2017. Now, by way of the amendment in the application, he again wants to bring the same facts on record, that his mother was suffering from uterus cancer and he was suffering from kidney ailment hence he could not remain present in the Court. Therefore, what he could not directly do of bringing on record these medical certificates now he wants to do it by making amendment in the petition for restoration.

12] It is also done at a very belated stage i.e. after evidence of both parties is closed and now petition is kept for final argument. No explanation worth the name is given as to why such amendment was not sought at earlier stage. Therefore, the bar, laid down in Proviso to Order VI Rule 17 CPC, definitely comes into play. It acts as an embargo for this Court and for the trial Court to exercise discretion whether to allow such amendment or not. As petitioner is keeping his application for amendment conspicuously silent about exercise of due diligence, that embargo is not crossed. Otherwise also, respondent is giving a go-bye to the earlier order passed by trial Court, rejecting his application for production of these very documents.

13] Hence, the trial Court has committed an error in taking too liberal a view while allowing said application. The observation of

the trial Court that no prejudice is going to be caused to the petitioner by such order, also cannot be accepted. Hence, the impugned order passed by the trial Court needs to be quashed and set aside being not legally sustainable.

14] The writ petition is accordingly allowed.

15] The impugned order passed by the trial Court is quashed and set aside.

16] Rule made absolute in above terms.

[DR.SHALINI PHANSALKAR-JOSHI, J.]