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

WRIT PETITION NO. 171 OF 2015

Smt. Joharbanu Jahangir Ghorl ...Petitioner
vs
Irfan Iqbal Bagwan & Anr. ...Respondents
.....
Mr R.B.Kulkarni I/b Prasad B. Kulkarni for the Petitioner.
Mr Prajakat M Arjunwadkar for the Respondent.

.....
**CORAM : B.P.COLABAWALLA, J.
DECEMBER 19, 2018.**

P.C. :

By this Writ Petition the Petitioner seeks to challenge the order dated 7th October, 2014 passed below Exh.85 in Regular Civil Suit No. 53 of 2010. Exh. 85 was an application filed by the Defendants seeking an amendment of the Written Statement. This application for amendment of the Written Statement came to be rejected by the Trial Court vide the impugned order and hence present Writ Petition.

2 The learned advocate appearing on behalf of the Petitioner submitted that the amendment application could not be filed earlier as the Petitioner is an illiterate lady and who has taken education only till the 3rd standard and that too in Urdu. This is the only explanation for not filing the amendment application earlier. The

next submission made by the learned advocate appearing for the Petitioner is that these amendments only elaborate what has already been stated in the Written Statement and no prejudice would be caused to the Plaintiffs if the amendment application is allowed. He, therefore, submitted that the impugned order be set aside and the Defendants be allowed to amend her Written Statement.

3 I am unable to agree with the submissions canvassed on behalf of the Petitioner. It is not in dispute that the trial of the suit has already commenced. In fact the Petitioner has in her amendment application itself stated that the Plaintiff has already filed its affidavit of evidence. This being the case, the rigours of the proviso appended to Order VI Rule 17 of the Code of Civil Procedure, 1908 (for short “the CPC”) would clearly be attracted. Under the said proviso the Court would have no jurisdiction to entertain the amendment application after commencement of the trial, 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. This proposition has clearly been laid down by the Supreme Court in the case of **Vidyabai & Ors. Vs. Padmalatha & Anr.** Reported in (2009) **2 Supreme Court Cases, 409** and more particularly in paragraphs 10 and 19 thereof. This decision of the Supreme Court has thereafter

been followed by our Court in several cases including by me in the case of **Prabhakar Vs Ramesh** reported in **2017(4) Mh.L.J. 634**.

4 In the facts of the present case, it is not even the case of the Petitioner that the facts sought to be brought on record by virtue of the amendment were not to their knowledge prior to commencement of the trial. This being the case, the conditions laid down under the proviso to Order VI Rule 17 of the CPC have clearly not been satisfied. Consequently the amendment could not have been allowed and was correctly rejected by the Trial Court.

5 In view of the foregoing discussion I find no merit in this Writ Petition. It is accordingly dismissed. However, there shall be no order as to costs.

6 Considering that the suit has been filed in the year 2010, the Trial Court is requested to hear and decide the suit as expeditiously as possible and in any event within a period of one year from today.

(B.P.COLABAWALLA, J.)