

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

WRIT PETITION NO.11511 OF 2017

Pushpa Ulhas Gadkari

...Petitioner

Vs.

Vasant Bhaskar Gadkari & Anr.

...Respondents

Mr. Sachin Gite, for the Petitioner

CORAM : M. S. SONAK, J.

DATE : APRIL 18, 2019

P.C.:

1. Heard Mr. Gite for the petitioner.
2. Challenge in this petition is to the order dated 11/8/2017 by which the Ld. Trial Judge has permitted the defendants to amend the written statement.
3. Mr. Gite submits that the defendants filed an application seeking leave to amend the written statement after commencement of the trial. He submits that the proviso to Order 6 Rule 17 of the CPC requires an applicant to establish diligence in such circumstances. Here, the defendants failed to explain as to why such amendment could not have been applied for, despite exercise of due diligence prior to the

commencement of the trial. He also submits that the alleged efforts never took place and therefore amendment ought not to have been allowed.

4. From the perusal of the impugned order, it is seen that the amendment was applied for on the basis of an alleged effort which took place on 17/4/2016 when the plaintiff's husband was visited the defendants' house alongwith the cheque amounting to Rs.5 Lakhs. At this stage, we are not concerned with the issue as to whether it is factually correct or not. However, it is apparent that amendment has been applied for on the basis of subsequent development, i.e., subsequent to filing of affidavit in lieu of examination in chief by the petitioner. Accordingly, the parameters to Order 6 Rule 17 of CPC including the proviso therein, has been substantially complied with.

5. Ld. Trial Judge has also awarded costs in favour of the petitioner. The discretion has been properly exercised and there is no case made out to warrant interference.

6. This petition is therefore dismissed. There shall be no order as to costs.

7. However, as submitted by Mr. Gite, the petitioner is required to be granted liberty to file additional affidavit in lieu of examination in

chief in response to the amended written statement. The Ld. Trial Judge is therefore, directed to grant such liberty to the plaintiff and take on record additional affidavit in lieu of examination in chief, which the petitioner may chose to place on record.

9. With liberty as aforesaid, this petition is disposed of.

10. All concerned to act on the basis of an authenticated copy of this order.

(M. S. SONAK, J.)