

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO.4632/2019
Maheshkumar S/o Mahadeorao Mahapure
..Vs..
Shirish Vinayakrao Chaudhary

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri D.R. Bhoyar, Advocate for the petitioner.

CORAM : Z.A. HAQ, J.
DATED : 16.7.2019.

Heard.

The defendant takes exception to the order passed by the trial Court rejecting the application (Exh. No.23) filed by him under Order 6 Rule 17 of the Code of Civil Procedure. By the application (Exh. No.23), the defendant sought permission to amend the written statement.

Learned trial Judge has recorded that facts which the defendant now wants to bring on record were within knowledge of defendant since 2002. The civil suit is filed in 2016. The trial is on the verge of conclusion inasmuch as recording of evidence of both sides is over and the civil suit is at the stage of final arguments. In the application (Exh. No.23) only explanation given for not incorporating the facts which the defendant now wants to bring on record is that the facts could not be pleaded earlier due to *bona fide* mistake. Learned trial

Judge has rightly refused to exercise jurisdiction vested in him by Rule 17 of Order 6 of the Code of Civil Procedure, keeping in view the proviso below Rule 17 of Order 6 of the Code of Civil Procedure. Learned trial Judge has recorded that the defendant has failed to show that inspite of due diligence it was not possible for him to bring on record the facts which now he intends to bring on record by the proposed amendment.

The impugned order cannot be faulted with and it cannot be said that the learned trial Judge has committed any error of jurisdiction which necessitates interference by this Court in the extraordinary jurisdiction. Hence, the writ petition is **dismissed**. No costs.

JUDGE