

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

WRIT PETITION NO.5017/2019

Jain Supari Centre and others

..Vs..

Shri Rameshlal Motilal Hasoriya and others

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

Court's or Judge's orders

Shri Madhur Deo, Advocate for the petitioners.
Shri S.S. Sitani, Advocate for respondent Nos.1 and 2.

CORAM : Z.A. HAQ, J.

DATED : 23.7.2019.

Heard.

Original defendants have challenged the order passed by the trial Court rejecting the application (Exh. No.49) filed by them under Order 6 Rule 17 of the Code of Civil Procedure seeking permission to amend the written statement. The application (Exh. No.49) came to be filed after the recording of examination-in-chief of plaintiffs was complete.

According to the petitioners / defendants, proposed amendment is necessary for complete and proper adjudication of the matter, and by the proposed amendment, the defendants are elaborating the pleading which are already raised in the written statement. It is further submitted on behalf of the petitioners / defendants that the pleadings, now sought to be incorporated remained to be incorporated in the written statement because of *bona fide* mistake of the lawyer

representing them and in such situation, the Court has to adopt liberal approach and allow the amendment. To support the submission reliance is placed on the following judgments:

(i) Judgment given in the case of *Mahila Ramkali Devi and others V/s. Nandram (dead) through Legal Representatives and others* reported in **(2015) 13 SCC 132**,

(ii) Judgment given in the case of *Bharat Petroleum Corporation Ltd. V/s. Precious Finance Investment Pvt. Ltd.* reported in **2007(1) Mh.L.J. 331**,

(iii) Judgment given in the case of *Baldev Singh and others V/s. Manohar Singh and another* reported in **(2006) 6 SCC 498** and

(iv) Judgment given in Writ Petition No.2630/2016 (*Razzak Khan Hayat Khan Pathan and others V/s. Sharaf Ali S/o Ahemad Ali*) on 22nd February, 2019.

The legal position laid down in the above judgments is very clear.

However, on going through the written statement filed by the defendants and the proposed amendment, I find that the defendants are trying to raise new plea by the proposed amendment which cannot be permitted after the recording of examination-in-chief of plaintiffs is complete. Furthermore, I find that the petitioners / defendants are not able to circumvent the bar created by proviso below Rule 17 of Order 6 of the Code of Civil Procedure which takes away the jurisdiction

of the Court to consider the amendment application unless the party seeking amendment satisfies the Court that inspite of exercise of due diligence, the party was not able to bring on record the facts proposed in the amendment. Learned Advocate for the petitioners / defendants submitted that the proviso below Rule 17 of Order 6 of the Code of Civil Procedure is not mandatory but is directory. Without delving into this issue, as I find that the explanation given for not incorporating the pleadings earlier is not sufficient, I am not inclined to show any indulgence in the matter. As far as the amendment proposed by paragraph No.5A is concerned, it is vague and learned trial Judge has rightly rejected it also observing that the details are not specified. It cannot be said that the learned trial Judge has committed any illegality or error of jurisdiction by rejecting the application (Exh. No.49). Hence, the writ petition is **dismissed**. In the circumstances, the parties to bear their own costs.

JUDGE