

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION
WRIT PETITION No. 8571 OF 2022**VAISHALI
ANIL
TIKAM**Smt. Bhimabai Vithal Kale****...Petitioner****Vs.****Shri Tatyabhau Kachru Gorade
and Ors.****...Respondents**Digitally
signed by
VAISHALI
ANIL TIKAM
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+0530*** * * *****Mr. Pavan Patil with Mr. Nitin Jagtap for the Petitioner
Mr. Prathamesh Bhargude for Respondents.****Coram : Sandeep K. Shinde, J.****Dated: 29th August, 2022.****P.C. :**

1. This Petition under Article 227 of the Constitution of India, takes exception to Order dated 5th May, 2022, which refuses leave to amend the plaint, sought under Order VI, Rule 17 of the Civil Procedure code. Petitioner-Plaintiff instituted the suit in question in the year 2008. In the year 2018, Defendant was permitted to amend written statement in view of decisions of the Revenue Authorities, that being subsequent event. Indisputedly, Plaintiff sought leave to amend the plaint in the year 2022, after commencement of trial. In terms of proviso to Order VI Rule 17 of the Code, the Court's jurisdiction in

allowing application to amend pleadings, is taken away unless conditions precedent, therefore, are satisfied i.e. it must come to conclusion that in spite of due diligence, the parties could not have raised the matter before commencement of trial. The settled law is, if an application for amendment of pleadings filed after commencement of trial, besides jurisdictional fact of necessity to determine real question of controversy between the parties, one more jurisdictional fact to be established which is exercise of due diligence.

2. Herein Petitioner-Plaintiff sought leave to amend the pleadings simply because the Defendant was permitted to amend the written statement in the year 2017. The application moved by him in the year 2022 is completely silent on the aspect of due diligence. Therefore, besides the jurisdictional fact of necessity to determine the real question of controversy between the parties, the Plaintiff was required to establish the due diligence. However, his application seeking leave to amend the plaint is completely silent on this jurisdictional fact. Thus, the impugned order, declining the leave to amend the plaint, cannot be faulted with. Petition is dismissed.

(Sandeep K. Shinde, J.)