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

**WRIT PETITION NO. 9581 OF 2016**

Symbiosis Society

...Petitioner

Versus

Kishore Rajaram Vitkar & Ors.

...Respondents

Mr. Manish Kelkar a/w. Mr. Ajinkya Udane, i/b. Mr. Ravi Bharadwaj, for  
the Petitioner.

**CORAM : MADHAV J. JAMDAR, J.**

**DATED : 6<sup>th</sup> OCTOBER 2022**

**P.C. :**

1. Heard Mr. Kelkar, learned counsel for the Petitioner.
2. The impugned order in the present Writ Petition filed under Article 227 of the Constitution of India is order dated 25<sup>th</sup> April 2016 passed in Revision Application No.19 of 2016 by the learned Member, Maharashtra State Co-operative Appellate Court (Mumbai), Bench Pune and order dated 29<sup>th</sup> December 2015 passed by the learned Judge, Cooperative Court No.1, Pune below Exhibit '54' filed by the original disputants in Dispute No.131 of 2010. The said application at Exhibit '54' was filed for amendment and allowed by impugned order

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dated 29<sup>th</sup> December 2015. The said order was challenged by the original opponent No.5 by filing Revision Application No.19 of 2016 and the said Revision Application was dismissed by the impugned order dated 25<sup>th</sup> April 2016.

3. Mr. Manish Kelkar, learned counsel for the Petitioner raised only one contention that the issues were framed in the Dispute on 15<sup>th</sup> July 2014 and thereafter, application for amendment is made on 17<sup>th</sup> October 2014. He relied on Order VI Rule 17 of CPC to contend that after the issues are framed, amendment could not have been allowed unless the Disputants satisfy the Court regarding due diligence as contemplated by proviso to Order VI Rule 17. He submitted that once the issues are framed, the trial has commenced and therefore, unless due diligence is shown, the amendment application could not have been allowed. He relied on judgment of Supreme Court in case of *Vidyabai & Ors. vs. Padmalatha & Anr.*<sup>1</sup>

4. Order VI Rule 17 reads as under:-

**“17. Amendment of pleadings.—**The Court may at any stage of the proceedings allow either party to alter or

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1 AIR 2009 SCC 1433

amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties :  
Provided that no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial.”

Proviso to Order VI Rule 17 provides that no amendment application shall be allowed after trial has commenced, unless the Court comes to the conclusion that inspite of due diligence, the party could not have raised the matter before the commencement of trial.

5. The Supreme Court in case of ***Vidyabai & Ors.*** (supra) has held that for the purpose of Order VI Rule 17 proviso, trial commences when issues are framed and affidavit in lieu of examination-in-chief is filed.

6. The learned counsel for the Petitioner fairly submitted that recording of evidence commenced on 2<sup>nd</sup> November 2017. Thus, it is clear that trial has commenced only on 2<sup>nd</sup> November 2017. The application for amendment was filed on 17<sup>th</sup> October 2014 and same

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was allowed by order dated 29<sup>th</sup> December 2015. Thus, in this case, application for amendment was filed before the commencement of trial.

7. It is settled legal position that all amendment applications in the plaint before commencement of trial are required to be granted liberally as there is no prejudice which can be caused to the other side. They will get fair opportunity to file additional written statement. In view of this, no interference is called for in the impugned order.

8. The Writ Petition is dismissed.

9. However, the Petitioner is granted opportunity to file additional written statement within a period of one month from today.

10. All contentions on merits are expressly kept open.

11. At this stage, learned counsel for the Petitioner submitted that by order dated 11<sup>th</sup> October 2017 passed by learned Judge,

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Cooperative Court, Pune application bearing No. 71 filed by the opponent No.5 was allowed and issue No.1 was directed to be tried as preliminary issue. He submitted that direction be issued to decide issue No.1 in time bound manner. It appears that preliminary issue was framed by order dated 11<sup>th</sup> October 2017. He submitted that evidence as far as the preliminary issue is concerned, has already been led and now matter is pending for arguments. He submits that the same is pending for arguments since 3<sup>rd</sup> July 2018. In view of these submissions, the learned Judge, Cooperative Court, Pune is requested to decide the said preliminary issue expeditiously and in any case within a period of four months from today.

12. Writ Petition is dismissed subject to above direction. No costs.

**MADHAV J. JAMDAR, J.**