

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, AT NAGPUR.**

Writ Petition No. 1824 of 2022

[Sau. Anita Rajendra Jaiswal ..vs.. Santosh Govindrao Gundawar]

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

Court's or Judge's orders

Mr. A. A. Dhawas, Advocate for the petitioner

CORAM : ROHIT B. DEO, J.

DATED : 11-4-2022

The petitioner is the plaintiff, who has brought suit for declaration and refund of earnest amount against the sole respondent.

2. The plaintiff filed her affidavit in lieu of oral examination-in-chief and then stepped into the witness box to prove the affidavit. Irrefutably, the trial commenced.

3. The plaintiff preferred an application seeking permission to amend the plaint to incorporate the pleading that when the transaction took place, her husband was present and, therefore, her husband is competent to depose as witness.

4. The defendant opposed the application seeking amendment. According to the defendant, the amendment was only an attempt to enable the husband of the plaintiff to depose on her behalf.

5. The trial Court rejected the application under Order VI Rule 17 of the Code of Civil Procedure (CPC) vide order dated 15-2-2018. Undeterred, the plaintiff preferred an application for review, which again came to be dismissed.

6. I do not see any attempt made in the application under Order VI Rule 17 of the CPC to establish that despite due diligence, the pleadings could not have been incorporated in the plaint prior to commencement of the trial.

7. The proviso to Order VI Rule 17 of the CPC is clearly triggered.

8. I see no error in the order of the trial Court whereby the application under Order VI Rule 17 of the CPC is rejected.

9. The petition is dismissed.

JUDGE

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