

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

Writ Petition No. 1381 of 2022

[Kaluram Mukundrao Mudholkar ..vs.. Rajendra Sukhdeorao Dahikar and ors.]

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

Court's or Judge's orders

Mr. C. A. Babrekar, Advocate for the petitioner

CORAM : ROHIT B. DEO, J.

DATED : 9-3-2022

The petitioner is defendant 1 in Special Civil Suit 35/2017 and is aggrieved by the order dated 20-2-2021 rendered by the learned trial Judge whereby the application preferred by the petitioner-defendant 1 under Order VI Rule 17 of the Code of Civil Procedure (CPC) is rejected.

2. It is irrefutable that the trial has commenced. The plaintiff has examined himself and is cross-examined. The proviso to Order VI Rule 17 of CPC is, therefore, triggered. In the entire application, I have not come across any averment which can be construed as an attempt to establish that despite due diligence, the matter could not have been brought before the Court before the commencement of the trial. As has become a common, albeit sharp practice, once the counsel is changed, the entire blame is put on the earlier counsel

and a request for amendment is more often than not made contending that the earlier counsel did not do the needful.

3. Even on facts, I see no error in the rejection order. I am satisfied, that a totally new defence, which is inconsistent with what is pleaded earlier, is sought to be taken. It is true that the defendant is entitled in law to take inconsistent defence. However, considering the stage, the application was moved, I am satisfied that the amendment is not *bona fide*. The petition is dismissed.

JUDGE

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