

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 1109 OF 2023

Bhaskar Devrao Jadhav

.. Petitioner

Versus

Feroz Khan Turabkhan

.. Respondent

Shri Aniket P. Sonpethkar, Advocate for the Petitioner.

CORAM : SHARMILA U. DESHMUKH, J.

DATE : 30TH JANUARY, 2023.

FINAL ORDER :

. Heard. The petitioner is aggrieved by the order dated 03rd March, 2021 rejecting the petitioner's application for amendment of the written statement.

2. Learned counsel for the petitioner submits that by way of amendment the petitioner was seeking to elaborate on the defence which was already been taken in the written statement.

3. The position is of a post trial amendment and although it is settled position of law that amendments are to be liberally allowed, considering the proviso to Order VI Rule 17 of the Code of Civil Procedure (for short "Code") in case of post trial amendment, it is necessary to consider as to whether the petitioner inspite of due diligence could not prefer the application for amendment earlier.

4. Perusal of the application filed by the petitioner nowhere reveals even a bare statement that inspite of due diligence, the same could not be raised before commencement of trial.

5. Considering the mandate of proviso to Order VI Rule 17 of the Code, no interference is warranted in the impugned order. The decision of the Apex Court relied upon by the learned counsel for the petitioner in the case of **Raj Kumar Bhatia Vs. Subhash Chander Bhatia** reported in ***AIR 2018 SC 100*** does not assist the case of the petitioner as in the facts of that case the Apex Court has held that declining to allow the amendment after reviewing the merits of the defence raised, is impermissible. In the present case, the learned counsel for the petitioner has not been able to demonstrate that the application of the petitioner satisfies the requirement of the proviso of Order VI Rule 17 of the Code.

6. The petition is devoid of merits and same is accordingly dismissed. There shall be no order as to costs.

[SHARMILA U. DESHMUKH, J.]