

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.2795 OF 2023

Miss. Anuradha Krishnaprasad Seth

...Petitioner

Versus

Smt. Sumitra Vishan Mehrotra and Others

..Respondents

Mr. Jayesh M. Joshi for the Petitioner.

Coram : Sharmila U. Deshmukh, J.

Date : 17th July , 2023.

P. C. :

1. Heard.

2. The challenge in the Petition is to the order dated 22nd January, 2019 rejecting the Petitioner's application seeking amendment of the plaint.

3. Mr. Joshi, learned counsel appearing for the Petitioner submits that by way of proposed amendment the Petitioner seeks to bring on record averments which are necessary for the effective adjudication of the dispute. He would further contend that amendments ought to be liberally allowed as the same are necessary for deciding the controversy in the suit.

4. Considered the submissions.

5. The undisputed position is that the trial has commenced and that the evidence of the Petitioner has been closed and as such proviso to Order VI Rule 17 of Code of Civil Procedure applies and it is necessary for the Petitioner to establish that inspite of due diligence the matter which is now sought to be raised could not have been raised earlier. The fact remains that the earlier chamber summons which was filed by the Petitioner was withdrawn and the averments of the present application does not disclose as to why the amendment now sought was not raised prior to the commencement of the trial. The trial Court by, the impugned order has considered the position by placing reliance on the decision of the Apex Court in the case of ***Vidyabai & Ors. vs Padmalatha & Anr.***¹ wherein the Apex Court has analyzed the provisions of Order VI Rule 17 of the Code of Civil Procedure and held unless the jurisdictional fact, as envisaged therein, is found to be existing, the Court will have no jurisdiction at all to allow the amendment of the plaint.

6. Considering the factual position of the commencement of the trial and the decision of the Apex Court in the case of ***Vidyabai*** (supra) there is no infirmity of the order of the trial Court rejecting the application for amendment.

1 .2009 (1) All M.R. 471 (SC)

7. Writ Petition stands disposed of.

[Sharmila U. Deshmukh, J.]