

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO.7521 OF 2018

Dnyaneshwar S/o Tukaram Folane .Vs. Satyanarayan S/o Shrinarayan Bhoot, through
LRs

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Shri V.R. Choudhari, Advocate for the petitioner.

Shri Vedit Lohia, Adv. h/f Shri R.L. Khapre, Senior Adv. for the respondent
Nos.1(a) to 1(b).

CORAM : ANIL S. KILOR, J.

DATED : 10/07/2023

1. Heard.

2. In the present writ petition, the order below Exh.58 dated 08.01.2018 passed by the 2nd Jt. Civil Judge, Jr.Dn., Buldhana, in RCS No.33 of 2011, allowing the application for amendment, is under challenge.

3. From the record, it is evident that, the application Exh.58 was the third application moved by the petitioner for the amendment of the plaint with the same pleading. Earlier, two applications were withdrawn and the third application was entertained and allowed by the trial Court. In Paragraph 4 of the impugned order, it is observed there was no pleading of due diligence. The reasons in Paragraph 4 of the impugned order, read thus:

“4.It is true that, in the instant application plaintiff has not mentioned any reason to show his due diligence. Defendant has relied on the above authority in which clearly held that, no application for amendment shall be allowed after the trial has commenced, unless the court comes to the conclusion that inspite of due diligence, the party seeking amendment could not have raised the matter before the commencement of trial. However, it is necessary to consider that, facts and circumstances, in the above authority is not same in the present suit. Therefore, these above authority are not applicable.”

4. The finding recorded in Paragraph 4, speaks for itself that in the application for amendment no pleading as regards due diligence was made by the plaintiff. Despite the same, ignoring the proviso to Order VI, Rule 17 of the CPC and also ignoring the authority cited by the defendant, the application came to be allowed. Hence, I have no hesitation to hold that the impugned order is illegal and not sustainable in the eyes of law. Accordingly, I pass the following order:

The writ petition is **allowed**.

5. The impugned order dated 08.1.2018 passed by the 2nd Jt. Civil Judge, Jr.Dn., Buldhana in RCS No. 33 of 2011, is hereby quashed and set aside.

JUDGE