

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

WRIT PETITION NO. 4847 OF 2018

1. Laxmibai Wd/o Ramdas Yaula
Age 55 Years, Occ. Household
R/o Anjangaon Panattai, Tq.
Anjangaon, Dist. Amravati
2. Pramod Ramdas Yaula
Age 38 Years, Occ-Agri.
R/o Anjangaon Panattai,
Tq. Anjangaon, Dist.Amravati
3. Sham Ramdas Yaula,
Aged about 36 Years, Occ. Agri.
R/o Anjangaon Panaattai
Tq. Anjangaon, Dist. Amravati
4. Sangita Ramdas Yaula,
Aged about 30 years, Occ. Household
R/o Anjangaon Panattai, Tq.
Anjangaon, Dist. Amravati

...Petitioners

// VERSUS //

1. Ramchandra Raoji Dharne,
Aged about 69 Years, Occ.Agri,
R/o Ambarpeth, Anjangaon-Surji,
Tq. Anjangaon-Surji,
Dist. Amravati
2. Chintaman Ghashiram Gaur
Age 75 Years, Occ. Money-Lender
R/o Budhwara, Tq. Anjangaon Surji,
Dist. Amravati

... Respondents

Shri P.S.Patil, Advocate for the petitioners.

CORAM : ANIL S. KILOR, J.

DATED : 30th JANUARY, 2023.

ORAL JUDGMENT :

In this writ petition, the challenge is raised to the order below Exhibit 50 dated 4th May, 2018 allowing the application under Order VI Rule 17 of the Code of Civil Procedure, 1908 (in short referred as “CPC”) passed by the learned Judicial Magistrate First Class, Anjangaon Surji in Regular Civil Suit No. 18 of 2016.

2. Shri Patil, learned counsel for the petitioners submits that the amendment application was allowed after the commencement of trial. It is submitted that the learned trial Court did not record the satisfaction that in spite of due diligence the party could not have raised the matter before the commencement of the trial which is pre-requisite while dealing with the application for amendment after the commencement of the trial.

3. None for the respondent, though served long back.

4. After going through the impugned order below Exhibit 50, the learned trial Court has observed that taking into consideration the nature of amendment, said amendment is necessary to decide the real controversy between the parties and to avoid multiplicity of the proceeding, the application was allowed.

5. It is not in dispute that the evidence of the plaintiff was already over when the application Exhibit 50 was allowed.

6. At this stage, therefore it is necessary to refer Order VI Rule 17 of the CPC. Order VI Rule 17 CPC reads as under:

"Amendment of Pleadings.-- The Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties:

Provided that no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial."

7. Undisputedly, there are no findings recorded by the learned trial Court as required as per the proviso to Rule 17 of Order VI of the CPC.

8. Moreover, proposed amendment refers to the events which were taken place prior to filing of the suit and there are no pleadings made in the application to fulfill the pre-requisite proviso to Rule 17 of Order VI of the CPC.

9. In the circumstances, I am of the considered view that the trial Court has committed error in allowing the application Exhibit 50 without recording the satisfaction as required under the proviso to Rule 17 of Order VI of the CPC. Accordingly, I pass the following order.

i. Writ petition is allowed

ii. The impugned order dated below Exhibit 50 dated 4th May, 2018 passed by learned Judicial Magistrate First Class, Anjangaon Surji in Regular Civil Suit No. 18 of 2016 is hereby quashed and set aside.

[ANIL S. KILOR, J.]

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by
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K NAIR
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