

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

WRIT PETITION NO.7782 OF 2022

Shri Dilip S/o Rameshrao Choudhari .Vs. Shri Narayan S/o Kurshnarao Sawade & Ors

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

Court's or Judge's Order

Shri D.U. Thakre, Advocate for the petitioner.

Shri S.M. Vaishnav, Advocate for the respondent No.1.

CORAM : ANIL S. KILOR, J.

DATED : 04/07/2023

1. Heard.
2. The present petition is arising out of the order below Exh.60 dated 04.07.2022 passed by the learned 3rd Jt. Civil Judge, Jr. Dn., Darwha, rejecting the application for amendment filed under Order VI, Rule 17 of the Code of Civil Procedure (CPC).
3. The only ground for rejection is that, the trial has commenced and there are no pleadings as regards due diligence. Hence, for not pleading due diligence as required as per the proviso of Order VI, Rule 17 of the CPC, the application came to be rejected.
4. After going through the application under Order VI, Rule 17 of the CPC, I do not find any error committed by the learned trial Court. The language of the Order VI, Rule 17 of the CPC is very clear and unless the

applicant makes pleadings in respect of due diligence, in a matter when the amendment was filed after the commencement of the trial, the Court does not get jurisdiction in such matter. In the circumstances, I do not find any reason to interfere with the impugned order. Accordingly, the writ petition is **dismissed**.

5. At this stage, the learned counsel for the petitioner submits that, as the application was rejected on a technical ground that no pleadings as regards due diligence were made, he may be allowed to file an application afresh as the amendment is necessary for proper and complete adjudication of all the issues involved in the suit.

6. In the circumstances, I am of the opinion that, no prejudice will cause to the other side if the petitioner is permitted to file a fresh application showing due diligence. Accordingly, the liberty is granted to the petitioner to move a fresh application for amendment with pleadings as regards due diligence. If such application is filed, the learned trial Court shall decide the same in accordance with law.

JUDGE