

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

Writ Petition (WP) No. 7971 of 2022

M/s Ambika Land Developers, Nagpur through its partner Sanjay Hingwe
and others

Versus

Narendra S/o Bapurao Barange and another

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

Court's or Judge's Order

Shri A.A.Sambaray, Advocate for the petitioners.

Shri N.D.Dawda, Advocate for the respondent no.1.

Shri Amol Jaltare, Advocate for the respondent no.2.

CORAM : ANIL S. KILOR, J.

DATED : 3rd MAY, 2023.

Heard.

2. In this writ petition, the order below Exhibit 35 dated 11th October, 2022 passed by the Civil Judge, Junior Division, Katol in Regular Civil Suit No. 47 of 2019, allowing the application for amendment of written statement filed by the defendant under Order VI Rule 17 of the Code of Civil Procedure (in short hereinafter referred as “CPC”), is under challenge.

3. The trial Court while allowing the said application has observed in paragraph 15 of the impugned order that the application has been filed

belatedly after the commencement of the trial. However, Shri Sambharay, learned counsel for the petitioner states that the matter was fixed for cross-examination of the plaintiff's witness. Be that as it may, the fact remains that the trial was commenced and thereafter the application for amendment to the written statement was moved by the defendant.

4. Proviso Rule 17 Order VI of CPC imposes a condition that the 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 the trial.

5. In the present matter though the learned trial Court has observed that the trial is commenced before the filling of the application for amendment. However, it is observed that the effective hearing has not commenced. The said finding is contrary to the requirement of proviso to Rule 17 of Order VI of the CPC. The learned trial Court has not recorded any findings in compliance with the said requirement of Rule 17 of Order VI of the CPC.

6. In that view of the matter, I am of the opinion that the matter needs to be remanded back to the trial Court to decide the application afresh by

recording the findings in compliance of proviso of Rule 17 of Order VI of CPC. Accordingly, I pass the following order.

- i. Writ petition is allowed.
- ii. Order below Exhibit 35 dated 11th October, 2022 passed by the Civil Judge, Junior Division, Katol in Regular Civil Suit No. 47 of 2019, is hereby quashed and set aside.
- iii. The application for amendment Exhibit 35 is remanded back to the learned trial Court for deciding the same afresh.
- iv. The learned trial Court is directed to decide the application Exhibit 35 afresh on or before **15th July, 2023.**

[ANIL S. KILOR, J.]

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