



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

WRIT PETITION NO. 2064 OF 2024

(NARAYAN RAMGOPAL PUNJABI..VS.. ANIL MISHRILAL GOLECHA & OTH.)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri Ketan Bhoskar, Advocate for Petitioner.
Shri A.S.Manohar, Advocate for Respondent Nos.1 & 2.

CORAM : ANIL S. KILOR, J.
DATED : APRIL 01, 2024.

1. Heard.
2. The rejection of amendment sought by the plaintiff to the plaint, vide impugned order dated 22/02/2024 by the trial Court is under challenge in this writ petition.
3. Admittedly, the matter was fixed for arguments of the parties before the trial Court and thus after the commencement of the trial the application was moved for amendment.
4. As per the proviso to Rule 17 of Order 6 of the Code of Civil Procedure it is mandatory in such matters to plead due diligence, which compliance has not been made by the petitioner/ plaintiff which can be seen from the application for amendment.
5. The Coordinate Bench of this Court in the case of *Jayashree ..vs. Bhaurao*, reported in **2014(4) Mh.L.J. 168** had an occasion to consider the various decision of the Apex Court on due diligence and thereupon this

Court ha summarised as under :

“9] In the judgment delivered in W.P. No. 722/2012 and connected matters on 25.09.2013, after taking into consideration the various decisions of the Apex Court and of this Court, the law on due diligence has been summarized in paragraph 87 as under; 87. The law on “due diligence” developed till this date is summarized as under :

(a) “Due diligence” means careful and persistent application and effort. It means the diligence as a prudent man would exercise in the conduct of his own affairs. Unless the party takes prompt steps, mere action cannot be accepted after the commencement of the trial. The due diligence determines the scope of party's constructive knowledge of the claim. It is a kind of reasonable investigation, which is necessary before claiming the relief.

(b) The due diligence is distinct from ignorance. In spite of knowledge, ignorance by a party or an Advocate cannot be a matter of due diligence. The neglect to perform an action, which one has an obligation to do, cannot be called as a mistake.

(c) The degree of prejudice to the other side by an amendment after the commencement of the trial is greater than one at pretrial stage.

(d) Without recording finding on the question of due diligence, the Court shall not get jurisdiction either to allow or disallow an amendment in the pleadings after the commencement of the trial.

(e) The Court while allowing an amendment must record a finding that in spite of due diligence, the party could not have raised the matter before the commencement of the trial or that the events sought to be brought on record by way of an amendment have occurred subsequent to the commencement of trial.

(f) The facts and grounds in the application for amendment must be clearly stated to bring out a case that the delay caused was beyond the control and diligence of the party proposing amendment.

(g) Where a party had acted with due diligence or not, would depend upon the facts and circumstances of the case and no hard and fast rule or straitjacket Formula can be laid down.”

6. In the teeth of the above referred observations of this Court and after going through the reasons recorded by the learned trial Court for rejection of the application for amendment namely, no pleadings are made as regards due diligence by the petitioner, I do not find any error committed by the learned trial Court in rejecting the application.

7. As far as the judgment of the Hon’ble Supreme Court, cited by the learned counsel for the petitioner, in the case of *State of M.P. ..vs.. Union of India*, reported in **(2011) 12 SCC 268** the same is not of any assistance to the petitioner as the facts of the said case are distinguishable.

8. In the circumstances, as there is no merit in the writ petition it is **dismissed**. No order as to costs.

JUDGE