



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

Writ Petition No.5686/2025

Navin s/o Kailashchandra Agrawal,
Aged about 44 years, Occ.-Business,
R/o.-Daryapur Road, Murtizapur,
Tq. Murtizapur, Dist- Akola.

.... Petitioner.

Versus

Sau. Rekha w/o Ravi Bharuka,
Aged about 49 years, Occ.-Business,
R/o.-Yamuna Vihar Society, Toshniwal Layout, Akola,
Tq. Akola, Dist-Akola.

.... Respondent.

Mr. V.A. Lohia, Advocate for petitioner.
Mr. C.A. Lohiya, Advocate for respondent.

CORAM : PRAFULLA S. KHUBALKAR, J.

DATE : 04-12-2025.

Oral Judgment

Rule. Rule made returnable forthwith. Heard finally by consent of the parties.

2. By this petition, the petitioner has challenged the order dated 05-05-2025 passed by the trial Court, allowing the application for amendment of the written statement filed by the defendant.

3. The primary contention of learned Counsel for the petitioner is that the impugned order is passed by the trial Court, without considering the purport of proviso to Rule 17 of Order VI of the Code of Civil Procedure. He submitted that the application for amendment at Exhibit-42 is filed by the defendant after the commencement of the evidence and without exercising any due diligence on her part. He also submitted that the main reason putforth by the defendant for filing the

application for amendment is change of the Counsel and without considering the reasons mentioned in the application for amendment, the impugned order is passed.

4. As against this, learned Counsel for the respondent submitted that the amendment application is rightly allowed by the trial Court by considering the fact that the proposed amendment is necessary for complete and effective adjudication of the controversy involved in the suit. He also submitted that the plaintiff is entitled to controvert the defence sought to be raised by the defendant by way of proposed amendment and thus justified the impugned order.

5. While considering the controversy it appears that the impugned order is passed by the trial Court by allowing the application for amendment after the commencement of trial. Although, there is reference to the contention of the plaintiff with respect to lack of due diligence and proviso to Rule 17 of Order VI of the Code of Civil Procedure, as referred in paragraph 7 of the impugned order, however, there is no consideration by the trial Court about the aspect of lack of due diligence. In paragraph 9 of the impugned order, there is reference to various dates and the stages of the suit which shows that the application for amendment is filed after the commencement of trial. Application for amendment is finally allowed by the trial Court by only considering the aspect that the proposed amendment is necessary for complete and effective adjudication of the controversy involved in the suit. However, it is crucial to note that there is no finding about Courts satisfaction on the aspect of due diligence on the part of the defendant in filing the application for amendment.

6. It is profitable to make reference to the judgment of Hon'ble Supreme Court in the matter of **Pandit Malhari Mahale vs Monika Pandit Mahale and others**, reported in **(2020) 11 SCC 549**, in which the position of law is laid down that the trial Court is required to record a finding about the aspect of due diligence while considering an application for amendment which is filed after the commencement of trial. In the instant case, this crucial issue about due diligence is not considered by the trial Court while passing the impugned order. Hence, the impugned order is unsustainable on this count and the matter needs to be remanded to the trial Court for deciding the application (Exhibit-42) afresh.

7. Hence, the following order is passed :-

(a) Order dated 05-05-2025 passed by the trial Court on application at Exhibit-42 in Regular Civil Suit No.145/2023 is quashed and set aside.

(b) The trial Court is directed to consider the application at Exhibit-42 afresh after giving an opportunity of hearing to both the parties and decide the same after considering the proviso to Rule 17 of Order VI of the Code of Civil Procedure.

8. In view of this, writ petition is allowed and disposed of.

9. Rule is made absolute in above terms. No costs.

(Prafulla S. Khubalkar, J.)