



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

WRIT PETITION NO. 6794 OF 2025

Jayant Keshav Deshpande, Aged 72 yrs, Occ: Agriculturist,
R/o Plot no.77-A, Krishna Palace, Flat no.G-1, Pande Layout,
Khamla Road, Nagpur.

PETITIONER

VERSUS

Rekhlal Shamdev Thakre, Age 52 years, Occ: Agriculturist,
R/o Sonegaon (Lodhi), Tah. Warora, Dist. Chandrapur.

RESPONDENT

Shri S.P. Kshirsagar, counsel for the petitioner.
Shri K.R. Giripunje, Advocate with Shri S.V. Sirpurkar, counsel for the respondent.

CORAM : PRAFULLA S. KHUBALKAR, J.

DATE : DECEMBER 11, 2025

ORAL JUDGMENT

RULE. Rule is made returnable forthwith and heard finally with consent of the learned counsel for the parties.

2. The petitioner's challenge is to the order dated 01.10.2025 passed by the trial Court allowing the application for amendment of the plaint.

3. The petitioner is the original defendant in a suit for permanent injunction with an alternative relief of refund of amount. The defendant had filed his written statement in the suit and even before the issues were settled, the plaintiff filed application for amendment of plaint to incorporate certain pleadings with respect to the transaction in between the parties by amending paragraph 4A to the plaint. Although the application was opposed by the defendant, the same was allowed by order dated 01.10.2025, which is subjected to challenge by way of instant petition.

4. Pertinently, the order allowing the amendment application is passed in the suit in which issues are yet to be settled. By way of proposed amendment, the plaintiff has sought to add averments to mention details of the transaction in between the parties. The proposed amendment is not in nature of adding any new prayer clauses or withdrawing any admissions made earlier. The trial Court has allowed the amendment application by considering the fact that the amendment is necessary to determine and decide the real controversy between the parties.

5. The learned counsel for the petitioner submitted that the plaintiff had failed to incorporate pleadings sought to be raised by proposed amendment and for lack of due diligence on his part, the amendment application deserved to be rejected. In support of his submissions, he placed reliance on the judgments of the Co-ordinate Bench of this Court in *Conception Fernandes & Another Versus Tasneem Shaikh & Others* [2014(5) Mh.L.J. 494], *Shant Snacks and Beer Bar, Pune Versus Chandrakant Shankarrao Pethkar & Others* [2020(4) Mh.L.J. 137] and *Khanna Rayon Industries Pvt. Ltd. Versus Swastik Associates & Others* [2023(5) ABR 206]. By referring to the aforesaid judgments, he submitted that the plaintiff failed to exercise due diligence and the amendment application deserved to be rejected.

6. It has to be seen that the amendment application is filed at the stage when the issues in the suit are yet to be settled. The proviso to Order VI Rule 17 of the Code of Civil Procedure, 1908 (for short, 'the Code') deals with the concept of due diligence when an amendment is sought to be raised after commencement of the trial.

7. The amendment sought by the plaintiff to add certain averments in the plaint even before issues are settled cannot be considered as an instance of lack of due diligence. In view of position of law that amendment application can be allowed at any stage, the proposed amendment by the plaintiff deserved to be allowed. The defendant is always entitled to file his consequential amended written statement. As such, the submission canvassed on behalf of the respondent that the amendment is necessary for deciding the real controversy involved in the suit and the same being filed even before settlement of issues deserved to be allowed, are acceptable. The judgments relied upon by the counsel for the petitioner although deal with the factors to be considered while allowing an amendment application, the same are not helpful to the petitioner in the peculiar facts of this case. By considering the settled position of law as laid down by the Hon'ble Supreme Court in *Life Insurance Corporation of India Versus Sanjeev Builders Pvt. Ltd.* [(2022) 16 SCC 1], the impugned order appears to be sound and proper.

8. Having regard to the above mentioned factual and legal aspects, no interference is warranted with the impugned order under Article 227 of the Constitution of India. The writ petition is dismissed with no order as to costs. Rule stands discharged.

(PRAFULLA S. KHUBALKAR, J.)