

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.16393 OF 2025

Kalala Shivayya Pujari
Through PA Holder
Shobha Shailesh Suvarna

...Petitioner

Versus

Umang Vinod Shah & Anr.

...Respondents

Mr. Sachin S. Punde a/w Mr. Suraj Jadhav, for the Petitioner.
Mr. Vijay Singh i/b Mohini Rehpade, for the Respondents.

CORAM: MADHAV J. JAMDAR, J.
DATED : 25th February 2026

PC:-

1. Heard Mr. Punde, learned Counsel appearing for the Petitioner and Mr. Singh, learned Counsel appearing for the Respondents.

2. By the present Writ Petition the challenge is to the legality and validity of order dated 07th August 2025 passed by learned Principal District Judge, Pune below Exhibit-15 in Regular Civil Appeal No.216 of 2020.

3. It is the submission of Mr. Punde, learned Counsel appearing for the Petitioner that the learned Principal District Judge has committed a jurisdictional error as proviso to Order 6 Rule 17 of the Code of Civil Procedure, 1908 (“CPC”) has not been taken into consideration.

4. It is the submission of Mr. Singh, learned Counsel appearing for the Respondents that the due diligence as contemplated by proviso to Order 6 Rule 17 of the CPC has been pleaded in the said application bearing Exhibit-15.

5. However, the impugned order do not show that the due diligence as provided in proviso to Order 6 Rule 17 has been taken into consideration by the learned Principal District judge. The Supreme Court in the case of *Vidyabai v. Padmalatha*¹ has held that, it is the primal duty of the court to decide as to whether such an amendment is necessary to decide the real dispute between the parties. Only if such a condition is fulfilled, the amendment is to be allowed. However, proviso appended to Order 6 Rule 17 of the Code restricts the power of the court. It puts an embargo on

1 (2009) 2 SCC 409

exercise of its jurisdiction. The court's jurisdiction, in a case of this nature is limited. Thus, unless the jurisdictional fact, as envisaged therein, is found to be existing, the court will have no jurisdiction at all to allow the amendment of the plaint.

6. In view of the above position, both the learned Counsel submit that by consent impugned order dated 07th August 2025 passed by learned Principal District Judge, Pune below Exhibit-15 in Regular Civil Appeal No.216 of 2020 be quashed and set aside and by consent the said application be remanded back to the learned Appellate Court for fresh disposal.

7. In view of the above discussion, following order is passed :-

ORDER

- i. Order dated 07th August 2025 passed by learned Principal District Judge, Pune below Exhibit-15 in Regular Civil Appeal No.216 of 2020 is quashed and set aside by consent and said application bearing Exhibit-15 filed in Regular Civil Appeal No.216 of 2020 is remanded back to the learned Appellate Court for fresh disposal.

- ii. It is clarified that this Court has not considered the merits of said Exhibit-15 application filed in Regular Civil Appeal No.216 of 2020 and all contentions in that behalf are expressly kept open.

[MADHAV J. JAMDAR, J.]