



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

WRIT PETITION NO.6811 OF 2024

Khushal s/o Madhoji Jabalpure

Vs.

Milind s/o Harishrao Kalambhe

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

Court's or Judge's orders.

Shri Vedang Deshmukh, Adv. h/f Shri N.A. Jachak, Advocate for petitioner.
Shri S.A. Agrawal, Advocate for respondent.

CORAM : M.W. CHANDWANI, J.

DATE : 09.03.2026.

1. The petition challenges the order dated 04.10.2024 passed below Exh.16 by the Civil Judge, Senior Division, Nagpur (for short, "Trial Court") in M.J.C. No.33/2021 thereby allowing the application filed by the respondent for the amendment in the written statement.

2. Heard learned counsel for the petitioner as well as learned counsel for the respondent.

3. Having gone through the impugned order it appears that, the respondent wanted to add para 11 of the compromise deed dated 15.01.2019 to his written statement after filing of the affidavit and after the matter was fixed for examination-in-chief by the petitioner. The sole contention is that, the Trial Court should not have allowed the amendment for the reason that the trial has already commenced and the compromise is not a subsequent event

in the suit but had already occurred prior to filing of the suit. It is not disputed that the petitioner has filed his affidavit of examination-in-chief and therefore, it can be seen that the trial has commenced.

4. A reference can be made to the decision of this Court (Aurangabad Bench) in the case of ***Mahadeo S/o Maruti Bhanje Vs. Balaji S/o Shivaji Pathade & Another***¹ wherein in para 16 it has been observed as under:

“16. In view of the aforesaid discussion, the view expressed by learned Single Judges of this Court in “Ajit Narsinha Talekar Vs. Smt. Nirmala Wamanrao Kakade and others” 2010 (5) Mah.L.J. 481, “Bhagwandas Kanhaiyyalal Bubna Vs. Shyamsundar Wasudeo Bubna and others” (2010 (1) Bom.C.R. 218, and “Vinod s/o Khimji Lodaya and another V. The Chief Executive Officer and others (Civil Revision Application No. 123/2009)”, needs to be endorsed as legal and proper. In our considered view, the trial in a civil suit commences from the date of filing of affidavits in lieu of the examination in chief of the witness/ es and the proviso to order 6 Rule 17 of the Code of Civil Procedure, 1908 will come into play only after stage of filing of affidavits in lieu of examination in chief of witness/ es.”

5. Needless to mention that in the present case, the petitioner who had filed M.J.C. No.33/2021 has already filed his affidavit of evidence on 14.01.2022 i.e. before more than 1½ year from the filing of the application for amendment in the written statement by the respondent. Therefore, the trial of M.J.C. No.33/2021 has already began.

¹ 2012 (7) ALL MR 564

It is not the case that, the fact which by way of amendment is being introduced by the respondent is a subsequent event; rather, it has occurred prior to the filing of the said M.J.C. No.33/2021. The reason given that the earlier counsel did not take care and did not state that fact, cannot be a ground to allow the application that too after the trial has begun. Since no due diligence has been shown by the respondent, I find substance in the argument of the learned counsel for the petitioner that the Trial Court ought not to have allowed the application for amendment of the written statement of the respondent.

6. In the decision of the Calcutta High Court in the case of *Sree Sree Iswar Radha Behari Jew Vs. Malati P. Soni* ² relied by the respondent, it has been observed that the expression “commencement of trial” in the proviso to Order VI Rule 17 of the Code of Civil Procedure would imply the date when the court first applies its mind after the affidavit of evidence is filed and when the first witness proves his affidavit of evidence or such witness seeks to prove a document for it to be tendered in evidence or the cross-examination of such witness begins, whichever is earlier. However, the decision rendered by the Division Bench of this Court in *Mahadeo* (*supra*) is binding upon me. So far as the question as to when trial commenced is to be answered the same shall be

decided in consonance with what has been held in ***Mahadeo*** (*supra*) i.e. the trial commences from the date of filing of the affidavit in lieu of examination-in-chief of the witness, hence, the decision of the Calcutta High Court will not be helpful to the respondent here. Accordingly, the petition is allowed.

7. The order dated 04.10.2024 passed below Exh.16 by the Civil Judge, Senior Division, Nagpur in M.J.C. No.33/2021 is quashed and set aside.

(M.W. Chandwani, J.)

Wagh