

IN THE HIGH COURT OF JUDICATURE OF BOMBAY,
BENCH AT AURANGABAD

WRIT PETITION NO. 9353 OF 2014

Babu Chanappa Shete ... Petitioner
Versus

Shankar Veernath Dharasive ... Respondents

.....
Mr. S.Y. Patil , Advocate holding for
Mr. B.N. Patil, Advocate for petitioner
Mr. S.S. Panale, Advocate for respondent
.....

CORAM : RAVINDRA V. GHUGE, J.

DATED : 10th MARCH, 2015

PER COURT :

1. I have heard Shri Patil learned Advocate for the petitioner and Shri Panale learned Advocate for the respondent, for quite some time.
2. Issue involved is in relation to an amendment to the plaint sought by the plaintiff under Order VI Rule 17 of the CPC.
3. The petitioner has preferred RCS No. 164/2007 for recovery of money. On transfer, the suit is renumbered as RCS No. 440/2013. The petitioner/ plaintiff has examined himself followed by the oral evidence of the Bank Manager.

4. An application Exhibit 48 was filed on 11-09-2014 after the cross-examination of the Bank Manager was concluded on 27-08-2014. Contention is that the cheque at issue is dated 10-10-2004. It is claimed that inadvertently the date mentioned in the plaint is 01-10-2004. The plaintiff has led evidence on the belief that the cheque was dated 01-10-2004.

5. The petitioner further contends that after the cross-examination of the Bank Manager, he noticed that the date of the cheque has been erroneously canvassed as 01-10-2004 when in fact it is 10-10-2004. By exhibit 48, prayer was made for seeking permission to amend the date of the cheque in the plaint so as to mention the correct date. By the impugned dated 29-09-2014, Exhibit 48 has been rejected.

6. The petitioner further submits that it is nobody's case that the cheque dated 01-10-2004 was ever issued by the defendant. No such cheque is subject matter of the suit since the cheque which is already placed on record as a part of the documentary evidence indicates that it is dated 10-10-2004.

7. The petitioner, therefore, submits that the whole suit would be adjudicated upon an inadvertent mistake committed by the petitioner. It would not be too late to correct the error so that the

suit would be adjudicated in the light of the cheque dated 10-10-2004 which is the only issue involved in the proceedings.

8. Shri Panale learned Advocate for the respondent has strenuously supported the impugned order. He submits that the petitioner cannot be said to be unaware about the date 01-10-2004 mentioned in the plaint since the suit has been pending for the last seven years. His evidence is also based on the pleading that the cheque dated 01-10-2004. After the trial has commenced, the plaintiff cannot be permitted to amend the plaint.

9. Shri Panale relies upon the judgment of the Apex Court in the *J. Samuel and others Vs. Gattu Mahesh and others, reported at 2012 (4) Mh.L.J. 40*. He draws my attention to paragraph Nos. 13 to 16 of the said judgment which read thus :-

13) Due diligence is the idea that reasonable investigation is necessary before certain kinds of relief are requested. Duly diligent efforts are a requirement for a party seeking to use the adjudicatory mechanism to attain an anticipated relief. An advocate representing someone must engage in due diligence to determine that the representations made are factually accurate and sufficient. The term 'Due diligence' is specifically used in the Code so as to provide a test for determining whether to exercise the discretion in situations of requested amendment after the commencement of trial.

14) A party requesting a relief stemming out of a claim is required to exercise due diligence and is a requirement which cannot be dispensed with. The term "due diligence" determines the scope of a party's constructive knowledge, claim and is very critical to the outcome of the suit.

15) In the given facts, there is a clear lack of 'due diligence' and the mistake committed certainly does not come within the preview of a typographical error. The term typographical error is defined as a mistake made in the printed/typed material during a printing/typing process. The term includes errors due to mechanical failure or slips of the hand or finger, but usually excludes errors of ignorance. Therefore the act of neglecting to perform an action which one has an obligation to do cannot be called as a typographical error. As a consequence the plea of typographical error cannot be entertained in this regard since the situation is of lack of due diligence wherein such amendment is impliedly barred under the Code.

16) The claim of typographical error/mistake is baseless and cannot be accepted. In fact, had the person who prepared the plaint, signed and verified the plaint showed some attention, this omission could have been noticed and rectified there itself. In such circumstances, it cannot be construed that due diligence was adhered to and in any event, omission of mandatory requirement running into 3 to 4 sentences cannot be a typographical error as claimed by the plaintiffs. All these aspects have been rightly considered and concluded by the trial court and the High Court has committed an error in accepting the explanation that it was a typographical error to mention and it was an accidental slip. Though the counsel for the appellants have cited many decisions, on perusal, we are of the view that some of those cases have been decided prior to the insertion of Order VI Rule 17 with proviso or on the peculiar facts of that case. This Court in various decisions upheld the power that in deserving cases, the Court can allow delayed amendment by compensating the other side by awarding costs. The entire object of the amendment to Order VI Rule 17 as introduced in 2002 is to stall filing of application for amending a pleading subsequent to the commencement of trial, to avoid surprises and that the parties had sufficient knowledge of other's case. It also helps checking the delays in filing the applications. [vide [Aniglase Yohannan vs. Ramlatha and Others](#), (2005) 7 SCC 534, [Ajendraprasadji N. Pandey and Another vs. Swami Keshavprakeshdasji N. and Others](#), [Chander Kanta Bansal vs. Rajinder Singh Anand](#), (2008) 5 SCC 117, [Rajkumar Guraward \(dead\) through LRS. vs. S.K.Sarwagi and Company Private Limited and Another](#), (2008) 14 SCC 364, [Vidyabai and Others vs. Padmalatha and Another](#), (2009) 2 SCC 409, [15 Man Kaur \(dead\) By LRS vs. Hartar Singh Sangha](#), (2010) 10 SCC 512.

10. Having heard the learned Advocates for the respective sides, I find that the cheque which is actually the subject matter of the suit is in fact dated 10-10-2004. The said cheque is on record. Factually, the dispute between the plaintiff and the defendant is with regard to the said cheque dated 10-10-2004. The whole suit is likely to proceed on a non-existing cheque dated 01-10-2004.

11. The ratio laid down by the Apex Court in the *J. Samuel* case (supra) would not be applicable to the case in hand, for the reason that the respondent in the said case had sought to introduce four sentences on the pretext that there was a typographical error in the plaint. On the plea that it was a typing mistake, he was permitted to introduce four sentences. The Apex Court thus observed in paragraph 16 reproduced above that introduction of three to four sentences cannot be permitted on the ground of correcting a purported typographical error.

12. In the instant case, the issue is that the cheque placed on record before trial Court dated 10-10-2004 is erroneously mentioned in the plaint as well as in examination- in-chief of the plaintiff as dated 01-10-2004.

13. In my view, if the said error persists, the fate of the suit is decided at this stage itself. It is bound to be rejected on account of the error committed in the plaint. It would not be too late to permit the petitioner to correct the said error. The respondent /defendant is yet to record his oral evidence. The defendant therefore has an opportunity to confront the said cheque.

14. In the light of the above, this petition is partly allowed. The impugned order dated 20-09-2014 is quashed and set aside. Application Exhibit 48 stands allowed.

15. The petitioner shall carry out the amendment in the plaint within a period of four weeks from today. Amendment is permitted subject to the petitioner depositing costs of Rs. 10,000/- before the Trial Court in RCS No. 440 of 2013 within a period of two weeks from today, failing which the petitioner shall not be permitted to carry out the said amendment. The defendant shall withdraw the said amount without any conditions.

(RAVINDRA V. GHUGE, J.)