

**IN THE HIGH COURT OF BOMBAY AT GOA.**

**WRIT PETITION NO. 674 OF 2015.**

Shri Suhas D. Anvekar,  
Son of late D. R. Anvekar,  
Major in age, married,  
Office:  
C/o Classic Builders,  
Engineer, Contractors & Real  
Estate, Developers,  
Sakhardande Apts., XA-6, 2<sup>nd</sup>  
Floor, Panaji, Goa.

Residence:  
C/o Classic Builders,  
Engineers, Contractors & Real  
Estate, Developers,  
Vihar Building, St. Inez,  
Panaji, Goa.

.... Petitioner.

Versus

Shri Durgadas Lotlikar,  
s/o Shri Ramnath Lotlikar,  
aged 54 years, married,  
business and r/o 'Gharkul'  
993/4, Moddi, Navelim,  
Salcete, Goa.

.....Respondent.

Mr. Deep Shirodkar, Advocate for the petitioner.

Ms. Lalita K. Naik, Advocate for the respondent.

**Coram:- K. L. WADANE,J.**

**Reserved on:21<sup>st</sup> November, 2015.**

**Pronounced on :23<sup>rd</sup> November,2015.**

**JUDGMENT**

Heard D. Shirodkar, learned Counsel appearing for  
the petitioner and Ms. L. Naik, learned Counsel appearing for  
the respondent.

2. Rule made returnable forthwith.

3. Heard by consent of the learned counsel appearing for the respective parties. Ms. L. Naik, learned Advocate waives notice on behalf of the respondent.

4. This Writ Petition is filed by the original defendants seeking to quash and set aside the order dated 26.2.2015 passed by the Civil Judge, Junior Division, Margao on an application for amendment of the pleadings at Exh.48.

5. The parties shall be referred to as per their original status before the trial Court.

6. Brief facts of the case may be stated as follows:-

The plaintiff/respondent filed a suit for recovery of the certain amount from the defendant/petitioner and there was some typing mistake/error in paragraphs 6 and 7 in relation to the figure of Rs.2,00,000/- and Rs.1,60,000/- So the plaintiff wants to correct the figures in paragraph 4 as Rs.3,00,000/- instead of Rs.2,00,000/- and the figure of Rs.1,60,000/- to Rs.60,000/-. According to the plaintiff this is an typing error and it can be corrected at any stage of the proceedings. The learned counsel appearing for the defendant states that

application for amendment of the pleadings is submitted at very belated stage and that too after recording of the evidence of plaintiff and his witness.

7. Amendment application was strongly opposed by the defendant on the ground that the suit was filed on 3.1.2011 and application for amendment of the pleadings was submitted by the plaintiff on 6.2.2015. Thus, in view of the proviso to Order VI Rule 17 of C.P.C, no application for amendment shall be allowed after the trial has been commenced, unless the Court comes to the conclusion that in spite of due diligence the parties could not have raised the matter before the commencement of trial. It is further submitted on behalf of the defendant that there is no whisper in the amendment application as to why plaintiff could not raised the pleadings before the commencement of trial despite of due diligence.

8. Mr. Shirodkar, learned counsel appearing for the defendant argued that the amendment application was not moved in spite of the fact that the defendant denied the material averments in the plaint by filing its written statement long back i.e 2/5/2011. The plaintiff was aware of the denial of the material contents of the plaint way back in the year 2011. In spite of that plaintiff failed to move an application for amendment immediately and there are no grounds or

circumstances pleaded by the plaintiff to show that in spite of due diligence plaintiff could not file such application.

9. As against this, Ms. L. Naik, learned Counsel appearing for the respondent has argued that amendment is only due to the clerical mistake. The learned counsel appearing for the respondent has drawn my attention to the contents of the agreement between the parties wherein it is mentioned that the amount which was to be paid at the time of signing of the agreement was Rs.3,00,000/- and rest of the amount of Rs.60,000/- was to be paid within one month from the date of the agreement. So according to the learned counsel appearing for the respondent, it is an typing mistake and the learned Trial Court has rightly granted the same.

10. It is true that in the agreement between the parties the total consideration of the subject matter is shown as Rs.3,60,000/-. The plaintiff had accepted Rs.2,00,000/- at the time of signing the agreement. It is material to note that this amount as well as the amount of Rs.1,60,000/- is written in the figures as well as in words. Therefore, I do not agree with the submission of the learned Advocate that it was an typing mistake. Apart from the above aspect, there is absolutely no reason why the plaintiff had not move the said application immediately after filing of the Written Statement in which the

defendant has clearly denied the material allegations in reference to the transaction. The application was filed after about four years. Meantime, the respondents adduced his evidence and evidence of his witness and thereafter he moved an application for amendment. In such circumstances, it is necessary to refer to the provisions of Order 6 Rule 17 CPC. Order 6 Rule 17 read thus:-

“The Court may at any stage of the proceedings allow either party to alter or amend his pleading in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties.

Provided that no application for amendment shall be allowed after the trial has commenced, unless the court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial.”

11. Thus from the above provisions, it is very much clear that no application for amendment shall be allowed after trial has been commenced, unless it is shown that in spite of due diligence pleadings could not be raised before the commencement of trial.

12. In the present case, admittedly the plaintiff and his witness have already adduced the evidence. Therefore, trial of the suit was already commenced. Amendment to the Order VI Rule 17 of CPC was with aim and object to shorten the litigation and speedy disposal of the suit. Therefore, it is seen from the above proviso that there are certain limitation imposed upon the Court to grant the amendment after commencement of trial. Even after the commencement of the trial the Court can allow the amendment provided it is for the parties who seek for amendment to show that in spite of due diligence it could not raise such amendment and secondly, such amendment is necessary for deciding real controversy between the parties.

13. Mr. Shirodkar, learned Counsel has therefore rightly relied upon the observations of the Supreme Court in the case of ***Vidyabai and others Vs Padmalatha and another, (2009)2 SCC 409.***

14. I have gone through the observations of the above cited authority and such observations are perfectly applicable to the facts of the present case.

15. During the course of the arguments, learned Advocate appearing for the petitioner has stated that the learned Trial Court has not taken into account correct legal position and

also not recorded any reasons while allowing the amendment application. Considering the legal position, and the fact that the proposed amendment is not due to the typing mistake, I am of the opinion that the order of the trial Court appears to be improper/incorrect, hence, needs to be set aside.

16. Hence, Writ Petition is allowed with no order as to costs. Order dated 26.2.2015 passed by the learned Trial Court in Regular Civil Suit No. 50/2011/E on Exh. 48 is hereby quashed and set aside.

17. Rule made absolute.

**K. L. WADANE, J.**

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