

**IN THE HIGH COURT OF BOMBAY AT GOA****WRIT PETITION NO.504 of 2016**

Mr. Atmaram Dhuri  
Major in age,  
R/o H No 45,  
Gopika Niwas,  
Behind Baina church,  
Vasco da Gama, Goa. .. Petitioner

Versus

Mrs Veenaben R. Parekh  
Major in age,  
Presently residing at  
Flat F 1,  
Shivangi Apartment Co  
operative Housing Society Ltd,  
Baina, Vasco da Gama, Goa. .. Respondent

Mr. S. K. Naik, Advocate for the petitioner.

Mr. J. A. Lobo, Advocate for the respondent.

**CORAM :- C. V. BHADANG, J.**

**DATE :- 9<sup>th</sup> JUNE, 2016.**

**ORAL JUDGMENT :**

Rule. Rule made returnable forthwith. Heard finally by consent of the parties.

2. The petitioner, who is the plaintiff in a suit filed under Section 6 of the Specific Relief Act, is challenging the order dated 30/03/2016 by which the application for amendment of the plaint is rejected. The plaintiff intended to amend the plaint by incorporation of a claim for mesne profits.

3. The suit filed by the plaintiff was decreed earlier, which was challenged by the respondent before this Court in Civil Revision Application No.40/2015. This Court, by a judgment and order dated 10/02/2016, has remanded the matter back to the Trial Court for deciding the suit afresh, "from the stage of recording of evidence of the parties". This Court had also directed that the suit be decided within a period of one year from 29/02/2016.

4. The principal reason for which the learned Trial Court has rejected the application for amendment is that the suit has been remanded for deciding the same afresh, from the stage of recording of evidence and further there is a direction for time-bound disposal of the suit. This, according to the learned Trial Court, was sufficient to hold that the application for amendment of the plaint was not maintainable.

5. I have heard the learned Counsel for the parties and perused the impugned order as also a copy of the plaint and the application for amendment.

6. At the outset, it is necessary to mention that the suit has been remanded for deciding it afresh from the stage of recording of evidence. In that view of

the matter, strictly speaking, the application for amendment would not be hit by the proviso to Rule 17 of Order VI of C.P.C. That apart, this is not the reason given by the learned Trial Court for declining the amendment. It is well settled that the Court has to allow all such amendments, which are necessary for the complete disposal of the controversy in the matter. Considering the overall circumstances, I find that the petitioner can be allowed to amend the plaint, thereby incorporating a claim for mesne profits as prayed.

7. In the result, the petition is allowed. The impugned order is hereby set aside. The application Exh.42 for amendment is allowed as prayed subject to payment of costs of Rs.5,000/- to the Goa State Legal Services Authority, Panaji, to be paid within two weeks from today. The petitioner shall carry out the amendment within a period of two weeks subject to the payment of costs, as aforesaid.

8. Rule is made absolute in the aforesaid terms.

**C. V. BHADANG, J.**

SMA