

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO.879 OF 2015**

MR. DIOGO JOAO FURTADO & ANR. ... Petitioners

Versus

MR.SADANAND J. ALDONKAR. ... Respondent

Shri Ashwin D. Bhobe, Advocate for the
Petitioners.

Shri Vivek Rodrigues, Advocate for the
Respondent.

Coram:- C. V. BHADANG, J.

Date:- 23rd June, 2016

ORAL ORDER:

By this petition, the petitioners who are the original defendants are challenging the order dated 26/02/2015 (below Exhibit D-36) passed by the learned Senior Civil Judge, Mapusa in Regular Civil Suit no.60/2008/C by which the application for amendment filed by the respondent/plaintiff has been allowed.

2. The brief facts are that the respondent has filed the aforesaid suit for recovery of money. That suit was filed by Mr. Sadanand Aldonkar claiming to be the proprietor of 'M/s. Aldonkar

Constructions and business concern'. On 8/01/2015, the respondent filed an application for amendment under Order 6 Rule 17 of Civil Procedure Code, claiming that M/s. Aldonkar Construction is a registered partnership firm of which Mr. Sadanand Aldonkar along with Mr. Sidarth Aldonkar and Mr. Samir Aldonkar are the partners. It was also contended that Sidarth and Samir have given a power of attorney in favour of Mr. Sadanand Aldonkar on 27/04/2001. The respondent therefore proposed to amend the plaint including the title clause by addition of the name of the two partners Sidarth and Samir and describing M/s. Aldonkar Construction as a partnership firm.

3. The petitioners opposed the application by filing a reply stating that the proposed amendment is belated as it is sought after a period of 7 years from the filing of the suit and no sufficient cause is shown for such delay. It was also contended that, if the amendment is

allowed, it will change the nature of the suit and will cause prejudice to the petitioners.

4. The learned Trial Court noticed in para 10 of the order that the suit was filed in the year 2008 while the application for amendment was made in the year 2015 and that "the plaintiff has not given any valid justification in support of the delay". The learned Trial Court further noticed that the partnership was formed on 26/04/2001 i.e. much prior to the filing of the suit and the existence of the partnership was within the knowledge of the respondent/plaintiff. The learned Trial Court also observed that "in normal course the proposed amendment cannot be considered, however the Court has to always see that the correct facts as existed on the day of the filing of the suit are averred in the pleading by the parties and further has to see that the multiplicity of the proceeding is avoided". Thus on a finding that although the delay was not justified, if

the partnership was in existence, the same has to be brought on record. The learned Trial Court has also observed that the evidence in the case has not started and no prejudice will be caused to the defendants. It was also found that the proposed amendment will not alter the cause of action or character of the suit as it only pertains to correctly describing the capacity of the plaintiff.

5. The learned Counsel for the petitioners states that once the Trial Court had found that there was no justification for the delay as the partnership had come into existence in the year 2001 i.e. much prior to the filing of the suit, the learned Trial Court could not have allowed the amendment. It is submitted that Mr. Sadanand Aldonkar had not only verified the plaint but had also filed an affidavit in evidence claiming to be the proprietor of the plaintiff which was then said to be a proprietorship concern. It is submitted that the question as to whether the

partnership had any surviving cause of action, (which was within limitation) on the date on which the amendment was allowed, would arise in the matter and this would certainly cause prejudice to the petitioners.

6. On the contrary, the learned Counsel for the respondent supports the impugned order. It is submitted that all such amendments which are necessary for deciding the real controversy in dispute and in order to ensure that the multiplicity of the proceedings is avoided, can be allowed at any stage of the proceedings.

7. I have carefully considered the circumstances and the submissions made. At the outset, it will be necessary to mention that as noticed by the learned Trial Court, the evidence has not yet started. The learned Counsel for the respondent has today produced a copy of the Deed of Partnership along with an extract of the register from the records of the Registrar of

Firms which shows that M/s. Aldonkar Constructions is a registered partnership firm of which Mr. Sadanand Aldonkar, Mr. Sidarth Aldonkar and Mr. Samir Aldonkar, are the partners. The question is only about the correct description of the plaintiff. It is true that there is no explanation forthcoming from the respondent as to why the plaintiff was not properly described, as a partnership firm, although the partnership had come into existence, much prior to the filing of the suit. In fact, even after filing of the suit the amendment is brought after about seven years. The question is whether for this reason alone, the amendment can be refused. It is now well settled that the Courts can allow amendment at any stage of the proceedings (subject to the proviso to Rule 17 Order 6 of the Civil Procedure Code, which does not apply in this case) which amendment, in the opinion of the Court, is necessary for deciding the real controversy in dispute. Mere correction of the

description of the plaintiff in my considered view and as rightly held by the Trial Court cannot be said to have caused any prejudice to the petitioners.

8. In so far as the question of limitation is concerned it will always be open to the petitioner to raise appropriate contention in this regard which shall be decided by the learned Trial Court in accordance with law. I have noticed the findings and the observations of the Trial Court in detail. If in such circumstances the Trial Court has exercised discretion in allowing the application in the absence of such exercise being shown to be arbitrary or perverse, no interference is called for in the exercise of supervisory jurisdiction of this Court, particularly, in the absence of any manifest injustice having been caused by the impugned order. Thus, no interference is called for in the impugned order. Therefore, I decline to entertain the Writ Petition, which is

accordingly dismissed, with no order as to costs.

C. V. BHADANG, J.

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