

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 3935 OF 2016**

Chhaya Mahesh Khandwala and
Anr.

Petitioners

Vs

Rajan Gangaram Dhebe

.. Respondent

Mr. Manmath S. Athayle, Advocate for Petitioners.

CORAM : R.G.KETKAR,J.

DATE : 16/04/2016

PC:

1. Heard Mr. Manmath Athayle, learned counsel for the petitioners at length.
2. By this Petition under Article 227 of the Constitution of India, the petitioners have challenged the Judgment and order dated 4.11.2015 passed by the learned Civil Judge, Junior Division, Mahabaleshwar below Exhibit-46 in R.C.S.No.15 of 2002. By that order, the learned trial Judge rejected the application made by the petitioners, hereinafter referred to as 'defendants', under Order VI, Rule 17 of C.P.C. for amending Written Statement.
3. In support of this Petition, Mr. Athayle strenuously contended that by prayer clause (1), the respondent-plaintiff had claimed amount of Rs.3,79,946/- from defendants. By prayer clause (2), as and by way of damages, the plaintiff has claimed interest at the rate of 18% from 20.9.2004 till realization of the amount. He submitted that the suit was instituted in the Court of

Civil Judge, Sr. Dn., Satara. In the year 2012, pecuniary jurisdiction of the Court of Civil Judge, Jr. Dn., was enhanced from Rs. 1 lac to Rs. 5 lacs. The defendants, therefore, took out application under Order VI, Rule 17 for amending Written Statement so as to incorporate one paragraph in the Written Statement. In the proposed amendment, the defendants contended that the plaintiff has claimed Rs.3,79,946/- from the defendants. The plaintiff has also claimed interest at the rate of 18% from 20.9.2004 till date of institution of the suit, i.e. 19.9.2007, which comes to Rs. 68,390.28 per annum. For a period of three years, it comes to Rs. 2,05,170.80. Thus the claim in the suit comes to Rs.5,85,116.80 (Rs. 3,79,946/- + Rs. 2,05,170.80) and accordingly the plaintiff has to value the suit and pay court fees. If the suit is accordingly valued, it will exceed the pecuniary jurisdiction of the Court of Civil Judge, Junior Division. He submitted that the learned trial Judge wrongly applied the decision of Teofilo Barreto Vs. Sadashiva G. Nasnodkar, 2007 (3) Mh.L.J. 850. He submitted that after the Written Statement is amended, the defendants will be in a position to take out application for rejecting the plaint on the ground that it exceeds pecuniary jurisdiction of the Court of Civil Judge, Junior Division. He submitted that under section 21 of C.P.C , the objection to territorial or pecuniary jurisdiction has to be raised at the earliest available opportunity. If the defendants

are not permitted to carry out amendment, they will be denied opportunity to raise objection relating to pecuniary jurisdiction of the Court of Civil Judge, Junior Division.

4. I have considered the submissions advanced by Mr. Athayle. I have also perused the material on record. The learned trial Judge has rejected the application on merits as also on the ground that the application for amendment is made after commencement of the trial.

5. The learned trial Judge has referred to the decision of Teofilo Barreto (supra) and observed that in view of Section 34 of C.P.C. as far as quantum of interest is concerned, that is the sole discretion of the Court. He has further reproduced following passage from that decision:

“According to the Suit Valuation Act and Order VII(i)(f) of C.P.C. require suit must be valued for the purpose of jurisdiction of the Court. So the Suits Valuation Act describes for valuation for the purpose of determining jurisdiction. With respect thereto valuation of the suit for jurisdiction is regulated by averments made in the plaint. Jurisdiction does not depend on the result of the suit but on the nature of the claim as brought. When the suit is filed in Civil Court, pecuniary jurisdiction of the Court is primarily determined by valuation which the plaintiff puts upon the subject-matter of the suit. Primarily, the Court in order to determine its jurisdiction can look and rely upon the valuation of the subject-matter which is given in the plaint.”

6. Perusal of the above extracted portion shows that this Court in Teofilo Barreto (supra) has held that the Suits Valuation Act prescribes for valuation for the purpose of determining

jurisdiction. The valuation of the suit for the purpose of jurisdiction is regulated by assertions made in the plaint. Jurisdiction does not depend on the result of the suit but on the nature of the claim as brought. When the suit is filed in Civil Court, pecuniary jurisdiction of the Court is primarily determined by valuation which the plaintiff puts upon the subject matter of the suit. In the present case, perusal of paragraph 6 of the plaint shows that the plaintiff has valued the suit on the basis of Rs.3,79,946/- and accordingly has paid the court fees. While considering the grant of interest as per Section 34 of C.P.C. it is the discretion of the Court whether to grant interest and if yes, at what rate and whether the plaintiff is entitled to interest as claimed in terms of prayer clause (b). In view thereof, I do not find that the learned trial Judge has committed any error in relying upon the decision of this court in Teofiolo Barreto (supra).

7. As far as the second ground given by the learned trial Judge is concerned, the defendants have taken out application for amendment after commence of trial. In the case of Vidyabai Vs Padmalatha, (2009) 2 Supreme Court Cass 409, the Apex Court has observed in paragraphs 10 and 11 thus:

“10. By reason of the Civil Procedure Code (Amendment) Act, 2002 (Act 22 of 2002), the Parliament inter alia inserted a proviso to Order VI Rule 17 of the Code, which reads as under:

"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."

It is couched in a mandatory form. The court's jurisdiction to allow such an application is taken away unless the conditions precedent therefor are satisfied, viz., it must come to a conclusion that in spite of due diligence the parties could not have raised the matter before the commencement of the trial.

11. From the order passed by the learned Trial Judge, it is evident that the respondents had not been able to fulfill the said pre-condition. The question, therefore, which arises for consideration is as to whether the trial had commenced or not. In our opinion, it did. The date on which the issues are framed is the date of first hearing. Provisions of the Code of Civil Procedure envisage taking of various steps at different stages of the proceeding. Filing of an affidavit in lieu of examination in chief of the witness, in our opinion, would amount to 'commencement of proceeding'."

8. After perusal of the application, I do not find that the defendants have satisfied the conditions stipulated in proviso to Order VI, Rule 17 of C.P.C. Even on this ground, I do not find that the learned trial Judge has committed any error in rejecting the Application. Hence, Petition fails and the same is dismissed.

9. It is, however, expressly made clear that where a decree is appealed from by the petitioner, any error, defect or irregularity in the impugned order, affecting the decision of the case, may be set forth as a ground of objection in memorandum of Appeal as contemplated by Section 105(1) of C.P.C.

(R.G.KETKAR, J.)