

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO.287 OF 2017**

Mr. Sudesh Jagannath Tulaskar
s/o late Mr. Jagannath Tulaskar,
major of age, service, married,
Varchawada, Tulaskarwadi,
Nagazar, Pernem, Goa .. Petitioner

Vs

Mr. Vitthal Vishwanath Tulaskar,
s/o late Mr. Vishwanath Tulaskar,
major of age, farmer, bachelor,
House No.9, Khalchawada,
Tulaskarwadi, Nagzar, Pernem,
Goa. .. Respondent

Mr. Ryan Menezes, Advocate for the petitioner.

Mr. D. J. Pangam, , Advocate for respondent.

Coram :- M. S. SONAK, J.

DATE :- 12nd April, 2017

ORAL JUDGMENT :-

Heard Mr. Menezes for the petitioner and Mr. Pangam
for the respondent.

2. Rule. Rule is made returnable forthwith, with the
consent of the learned Counsel for the parties.

3. This petition takes exception to the order dated 27/10/2016, by which the learned Trial Judge has declined leave to the petitioners to amend the additional Written Statement to the extent indicated in the impugned order.

4. Leave to amend has been granted in respect of some items. However, in so far as paras 3(i), 3(iii), 3(iv) and 3(vi) of the schedule is concerned, the learned Trial Judge, has declined leave on the ground that such amendment would amount to withdrawal of admissions.

5. Mr. Menezes submits that amendment was applied for at a stage much prior to the commencement of the trial. He submits that there were obvious errors in additional Written Statement and even the Advocate has filed an affidavit that since additional Written Statement was filed in a hurry, such errors crept in. The Advocate has, in fact, owned up responsibility for such errors. Mr. Menezes submits that this is really not a case of withdrawal of admissions, but a case of correction of obvious errors, which have crept into the pleadings out of inadvertence.

6. Mr. Pangam, the learned Counsel for the respondent submits that initially, certain averments in the amended plaint had

been admitted by the petitioner in additional Written Statement. By means of amendment, such admissions are sought to be withdrawn and in their place, denials are sought to be substituted. He submits that this is clearly a case of withdrawal of admissions, which is impermissible. He submits that if the amendment is allowed, the plaintiff will have to lead evidence, despite there being admissions in so far as the present state of affairs is concerned. For these reasons, Mr. Pangam submits that there is no case made out to interfere with the impugned order.

7. Upon consideration of the rival submissions and perusal of the record and/ or the judgment, this is a case where the amendment, as applied by the petitioners, ought to have been allowed. In the first place, this is a pre-trial amendment. Secondly, we are concerned with the amendment to additional Written Statement and such amendments to the Written Statement or additional Written Statement, have to be liberally permitted. Thirdly, from the perusal of the additional Written Statement, the so called admissions really do not appear to be any admissions in the strict sense. In any case, they do not appear to be some admissions of great moment.

8. The Advocate, who filed additional Written Statement,

has filed an affidavit owning up the responsibility for errors, which have crept in. Upon perusal of additional Written Statement, it does appear that the same has been filed in a hurry and in any case, without bestowing full consideration. No doubt, Mr. Pangam, the learned Counsel for the respondent is right that some prejudice is bound to occasion to the respondent. However, the prejudice is of such a nature, as can be compensated by costs.

9. For all the aforesaid reasons, the impugned order is set aside. The Amendments to the additional Written Statement applied for by the petitioner, are allowed in their entirety. This shall, however, subject to payment of costs of Rs.5,000/- to the respondents on or before the next date of hearing before the learned Trial Judge. Amendment to be carried out within a period of four weeks from today.

10. Rule is made absolute in the aforesaid terms.

11. All concerned to act on basis of ordinary typed copy of the order.

M. S. SONAK, J.

SMA