

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION**

**WRIT PETITION No. 9153 OF 2017**

|                              |                       |
|------------------------------|-----------------------|
| <b>C.P. Mohandas</b>         | <b>....Petitioner</b> |
| <b>Vs.</b>                   |                       |
| <b>Vijay Tukaram Raundal</b> | <b>....Respondent</b> |

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Mr. Y.G. Thorat i/b. Ashok Tajane for Petitioner  
Mr. Joel Carlos for Respondent

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**CORAM : M.S. SANKLECHA, J.**  
**FRIDAY, 18<sup>TH</sup> AUGUST, 2017**

**P.C.**

. Moved for urgent ad-interim and interim reliefs.

1. This petition under Article 227 of the Constitution of India challenges the order dated 16.2.2017 passed by the Civil Judge, Senior Division, Pune. The impugned order dated 16.2.2017 rejects the application of the Petitioner for amendment of the plaint filed for specific performance of the agreement dated 8.11.1994.

2. It is an undisputed position that amendment of the plaint is being sought after commencement of trial in Special Suit No. 1204 of 2004 i.e. Post 2002 amendment. Therefore, the proviso to Order 6 Rule 17 of the

Code of Civil Procedure (Code) would apply. Admittedly, the Issues were framed on 3.2.2015, the Plaintiff's Examination -in-chief was filed on 17.3.2015 and it was completed on 20.2.2016 while the amendment application was filed on 17.11.2016. The amendment sought is to change the boundaries of the suit property.

3. Mr. Thorat, learned counsel for the Petitioner points out the amendments merely sought to bring on record the correct boundaries of the suit property of which the specific performance was sought. This should have been allowed. It is further submitted that there has been due diligence on the part of the petitioner and therefore, the amendment would not be hit by the proviso to Order 6 Rule 17 of the Code.

4. However, the impugned order finds that during the cross examination, the Plaintiff admit that there is uncertainty about boundaries mentioned in the said agreement for sale. Therefore, the entire exercise of amendment is to get over the admission made by the Plaintiff during the cross examination of the Respondent. Besides, the impugned order holds that the Petitioner has not shown due diligence for not having moved the amendment application earlier, as the facts seeks to be brought on record by the amendment was within the knowledge of the Petitioner i.e. prior to

filing of the suit. In the above view, the application was rejected on the ground that the proposed amendment will change the subject matter of the suit and also that the proposed amendment is hit by the proviso to Order 6 Rule 17 of the Code.

5. I find that the amendment is proposed after the trial has commenced and no due diligence on the part of the Petitioner established as the boundaries now sought to be corrected as known before the filing of the suit. The proposed amendments are hit by the proviso to Order 6 Rule 17 of the Code. Therefore, in the aforesaid facts, the view taken by the impugned order is a possible and reasonable view. There is, therefore, no reason for me to exercise my supervisory jurisdiction, to interfere under Article 227 of the Constitution of India with the view taken by the Trial Court in the impugned order dated 16.2.2017.

7. Hence, writ petition is dismissed. No order as to costs.

**[M. S. SANKLECHA, J.]**