

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

WRIT PETITION NO.10211 OF 2017

Mr.Dnyaneshwar Shankar Mali & Ors. ..Petitioners

V/s.

Mr.Mahadev Namdev Hendre ..Respondent

Mr.P.G. Jagdale for the Petitioners.

Mr.S.R. Morey i/by Mr.V.S. Talkute for the Respondent.

CORAM : M. S. SONAK, J.

DATE : 15th SEPTEMBER 2017

P.C.

1. Not on board. Upon production, taken on board.

2. The challenge in this petition is to the order dated 20-06-2017, by which the learned Trial Judge has declined leave to amend the written statement to the petitioners (original defendant).

3. In this case, leave to amend was applied for after the conclusion of the evidence and at the stage when the matter was being finally argued.

4. Mr.Jagdale, the learned counsel for the petitioners

submits that the basic facts already find place in the written statement and the purpose of the amendment was only to further elucidate or explain these basic facts. He submits that the documents, which are referred to in the application seeking leave to amend or in the schedule of amendment remained to be shown to the Advocate for the defendant. He submits that this is sufficient cause and leave to amend was required to be granted.

5. If, the basic facts, as stated by Advocate Mr.Jagdale already find place in the written statement, there is really no necessity to seek any amendment and that too, at the stage when the matter was finally argued. In any case, the reason stated by the defendant, is hardly a reason which qualifies for the exercise of powers to grant leave to amend. The proviso to order VI Rule 17 of the Civil Procedure Code specifically provides that no amendment may be permitted after the commencement of the Trial. Unless and until the party succeeds in showing that in spite of due diligence, the party could not have raised the matter before the commencement of the Trial. No such effort is made by the defendant to demonstrate that despite due diligence the matters now proposed to be raised by way of amendment could not have been raised before the commencement of the Trial. There is no

jurisdictional error in making of the impugned order. The discretion has also been exercised fairly and not unreasonably. This petition is therefore, dismissed. There shall be no order as to costs.

(M. S. SONAK, J.)