

***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 10448 OF 2012***

Shri Shiva Dhanjibhai Pardhi & Ors.	...Petitioners
Versus	
Arunkumar Narrotamdas Vora & Ors.	...Respondents

Mr.Satyajeet M. Mirajkar, for the petitioners.
Ms.Priya Ranade i/b. M/s. Makrand Gandhi & Co.for the respondent Nos. 3 to 5.

***CORAM : SMT. SADHANA S.JADHAV, J.
DATE : 4th December, 2017.***

P.C. :

Rule. Rule made returnable forthwith with consent of the parties. Heard the learned counsel for the petitioners at length.

2. The petitioners happen to be the plaintiffs in Special Civil Suit No.54 of 2012 pending before the Civil Judge, Senior Division, Vasai. The petitioners had filed an application under Order VI Rule 17 of the Code of Civil Procedure, seeking amendment to a portion of paragraph 10 in the plaint. The learned Court has rightly rejected the said application on the ground that the petitioners had failed to demonstrate due diligence and that no reasons were assigned for making an incorrect averment in the plaint.

3. The learned counsel for the petitioners submits that it was orally demonstrated before the Court that it was a typographical error.

Order VI Rule 17 of C.P.C. reads thus :-

“17. Amendment of Pleadings.- the Court may at any stage at the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties:

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. “

The proviso to Order VI Rule 17 contemplates that the onus is cast upon the applicant to show that despite due diligence, the grounds could not be raised in the plaint. In the present case, facts have been raised. However, there is an error which, according to the learned counsel, needs to be rectified. It is vehemently submitted that it is a typographical error and, therefore, the learned counsel for the petitioners submits that the plaintiffs deserve a fair chance to make out their case before the Court. The learned Court has observed that once an admission is made, it cannot be allowed to be withdrawn without there being any justification to the satisfaction of the

Court. It is more than clear that at that stage, the Court was not satisfied with the oral submissions.

4. In view of this, the learned counsel for the petitioners, upon instructions, seeks liberty to withdraw the Petition with further liberty to file a fresh application before the trial Court under Order VI Rule 17 of C.P.C. Liberty needs to be granted in the interest of justice. The said application be considered only in the eventuality that the said application is filed on or before 21.12.2017. The learned Civil Judge, Senior Division, Vasai, shall not be influenced by the withdrawal of this Petition and shall decide the said application within four weeks of date of filing on its own merits uninfluenced by the withdrawal of this Petition. Petition stands disposed of in the above terms. Rule is made absolute accordingly.

(SMT. SADHANA S.JADHAV, J.)