

IN THE HIGH COURT OF BOMBAY AT GOA

CIVIL APPLICATION (REVIEW) NO. 14 OF 2018

IN

WRIT PETITION NO. 212 OF 2018

**LAWRENCE CHRISTOPHER FERNANDES AND
ANR.,** ... Applicants

Versus

ERROL F. MC MAHON., ... Respondent

**Adv. Shashikant Narayan Joshi for the Applicants.
Adv. V. Rodrigues for the Respondent.**

Coram:- C. V. BHADANG, J.

Date:- 20th June 2018

P.C.:

Heard the learned counsel for the applicants for some time.

On hearing the learned counsel for the applicants and on going through the record, I do not find that a case for review of the order is made out. This Court while dismissing writ petition no.212/2018 has held that the applicants have failed to aver or to demonstrate that inspite of due diligence the applicants could not raise the matter, about the transaction in the suit, being hit by the provisions of the Money Lenders Act, prior to the commencement of the trial. It is now well settled that in cases where an application is filed subsequent to the commencement of the trial, the applicant has to demonstrate that inspite of due

diligence the matter could not have been raised earlier. This is one of the jurisdictional facts which must exist before which the trial court can grant such adjournment. Shri Joshi, the learned counsel for the applicants has referred to the observations made in para 27 of the judgment in order to submit that the matter was raised prior to the commencement of the trial. This Court has found that paras 11-A and 11-B which were sought to be introduced in the additional written statement did not contain any averment as regards suit transaction being barred by the Money Lenders Act. The learned counsel has referred to the other paragraphs in the written statement in order to contend that such a plea was already raised. It is true that there is such an averment in para 3. However, the fact remains that in the application for amendment, the applicant has not even averred that prior to the commencement of the trial the applicant could not have raised such a plea. I find that a liberty can be granted to the applicant to challenge the order refusing to grant the amendment passed by the trial court in an appeal in the event the decree in the suit is adverse to the applicant as provided in section 105 of C.P.C.. Subject to this, no case for grant of review is made out. The civil application for review is accordingly dismissed.

C. V. BHADANG, J.