

**IN THE HIGH COURT OF BOMBAY AT GOA**

WRIT PETITION NO. 35 OF 2018

OSCAR LEAL GARCIA AND ANR., ... Petitioners

Versus

DORIANO MALTAGLIATI, REP. THR.  
THEIR ATTORNEY HOLDER, MICHAEL  
LOBO AND ANR., ... Respondents

Adv. Anthony Joe D'Silva for the Petitioners.

Coram:- C. V. BHADANG, J.

Date:- 10th January 2018

Oral Order:

Heard Shri D'Silva, the learned counsel for the petitioners. The petitioners, who are the plaintiffs are challenging the order dated 6/11/2017 below (Exhibit 46) passed by the learned trial court partly allowing an application for amendment sought by the respondents to the counter claim. The respondents by their application (Exhibit 46) were seeking amendment on three counts. Firstly, it was contended that the respondents ( plaintiffs in the Counter claim) had made improvements towards renovation/beautification of the house and had incurred expenditure to the tune of Rs.13,17,746/- on the same of which they seek recovery.

Secondly, it was contended that the petitioners had obtained

the possession of the suit premises on 7/5/2011 on account of which the respondents had to obtain an alternate accommodation and to pay Rs.10,000/- in excess of what was paid in respect of the suit premises. In such circumstances the respondents sought recovery of Rs.3,40,000/- for 34 months i.e. from 7/5/2011 till 28/2/2014.

Thirdly it was contended that the respondents had kept Rs.6,30,000/- in the house and the respondents have lost the said amount on account of dispossession of the suit premises by the petitioners. The respondents sought recovery of the said amount. The amendment on the third count has been disallowed.

2. So basically we are concerned with the amendment sought on the first and the second count as above.

3. During the course of the arguments the learned counsel for the petitioners did not seriously dispute the amendment in so far as the claim towards the expenses incurred for renovation/beautification of the house are concerned. Thus the only contention raised was in respect of the amendment seeking recovery of Rs.3,40,000/- on the ground that the said claim would be barred by limitation.

4. On hearing the learned counsel for the petitioners, I do not

find that any case for interference is made out. The question whether the said amendment relates back to the filing of the suit can be left open which can be gone into by the trial court while deciding the suit. In any event the trial court can consider the question whether the claim has to be restricted to a period of three years prior to filing of the application for amendment. With this the petition is dismissed.

C. V. BHADANG, J.

ap/-