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

WRIT PETITION NO. 4413 OF 2017

Kum Gayatri Ajit Thakar ... Petitioner
V/s.
Shri.Prabhakar Anant Thakar ... Respondents

Mr.Vasant D. Raut, for the Petitioner.
Mr. T.D. Deshmukh, for the Respondents.

CORAM : DR.SHALINI PHANSALKAR-JOSHI, J.

DATE : 22nd MARCH, 2018.

P.C. :

- 1] Heard learned counsel for the petitioner and respondent.
- 2] By this petition filed under Article 227 of the Constitution of India, the petitioner is challenging the order dated 13.08.2015, passed by 4th Additional Judge, Small Causes and Jt. Civil Judge, Senior Division, Pune, below the Application Exh.79 in Special Civil Suit No.447 of 2012.
- 3] Application at Exh.79 was filed by the present petitioner, who is plaintiff before the trial Court for amendment of the plaint under Order VI Rule 17 of the Code of Civil Procedure, contending inter-alia that recently she came to know that at the time of development agreement, developer has paid an amount of Rs.87.50 lacs to Shantabai, which amount was deposited either in the account

of Shantabai individually or jointly with defendant No.1. It was submitted that this amount was not shown by deceased Shantabai in the Will, as at that time development agreement was not executed and in view thereof, on the basis of the Will Deed of Shantabai, petitioner has filed suit for partition of 3/4th share in the suit property. It was submitted that in the amount of Rs.87.50 lacs, which was received by Shantabai, the petitioner is also having 3/4th share and therefore, she may be permitted to carry out the necessary amendment in the plaint to seek 3/4 th share in the said amount.

4] This application came to be strongly resisted by the respondents and the trial Court has rejected the same considering the delay in filing such application and that too, despite the fact that the petitioner was very well aware of the said development agreement.

5] On perusal of the development agreement to which the petitioner herself was a party and which is dated 9th February, 2010, it can be seen that there is clear mention of the earlier development agreement to which Shantabai was party and which was executed 31st July, 2008. The said agreement also mentions about Shantabai receiving this amount of Rs.87.50 lacs. Thus, there is categorical reference of this agreement of the year 2008, in the agreement of 2010 to which the petitioner was party. Therefore, since prior to the filing of the suit, the petitioner was aware about the amount of

Rs.87.50 lacs, which was received by Shantabai. In view thereof in the suit itself, she should have sought her share in the said amount . However, she has not done so and after the trial has commenced, the petitioner has filed this application for amendment, on vague plea that recently she came to know about the amount received by deceased Shantabai.

6] In such situation, application for amendment of the plaint definitely suffer from delay and latches. It is also without giving any explanation as to the exercise of due diligence by the petitioner. Proviso to Order-VI Rule-17 of C.P.C., clearly mandates that, once the trial has commenced, no amendment in the pleading shall be allowed, unless the Court comes to a conclusion that despite exercise of due diligence, the petitioner could not bring these facts to the notice of Court at an earlier stage. As held by the Apex Court in the case of Vidyabai & Ors. Vs. Padmalatha & Anr. [(2009) 2 SCC 409], this jurisdictional aspect is an embargo and unless a party crosses that embargo, Court cannot allow such application for amendment. Hence, in the present case, on the vague plea raised by the petitioner that recently she came to know about the receipt of the amount by late Shantabai, which plea is falsified from the contents of her own agreement, the trial Court has rightly rejected the said

application for amendment.

7] Learned counsel for the petitioner has has tried to rely upon the judgment of this Court in the case of *Rajbahaddur Jiyaram Yadav -vs- Prakash @ Pappu Jiyaram Yadav and ors, [2016 (2) Mh. L.J. 639]*, to submit that amendment in the plaint can be allowed even after the commencement of the trial. However, the facts of the said case show that as it was found therein that if the suit continued in the form in which it stood, the same was most likely to result in rejection of suit and hence it was held that the amendment needs to be allowed. That is not the case here.

8] In such situation, once the trial Court has exercised its discretion in rejecting the application, in writ jurisdiction, this Court should restrain itself from interfering in the said discretion exercised by the trial Court.

9] Hence the Writ Petition being devoid of any merit stands dismissed.

[DR.SHALINI PHANSALKAR-JOSHI, J.]