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

WRIT PETITION NO. 8915 OF 2017

Vishal Vasant Kudale	...	Petitioner.
V/s.		
Smt. Chaya Rajaram Pawar	...	Respondent

Mr. D. G. Dhanure, for the Petitioner.
Mr. R.D. Pawar, for the Respondent.

CORAM : DR.SHALINI PHANSALKAR-JOSHI, J.

DATE : 9th JANUARY, 2018.

P.C. :

- 1] Heard learned counsel for petitioner and respondent.
- 2] Rule.
- 3] Rule returnable forthwith with the consent of learned counsel for the parties.
- 4] By this petition filed under Article 227 of the Constitution of India, the petitioner is challenging the order dated 7th April, 2017, passed below Exg.80 in R.C.S.No.223 of 2012. The said application was filed by the respondent-plaintiff for amendment in the plaint under Order VI Rule 17 of the Code of Civil Procedure, contending inter alia, that in paragraph No.10 of the plaint, she has categorically stated that the development agreement and the power of attorney

were obtained from her by the defendant fraudulently. However, as said documents were not available with her at the time of drafting of the plaint, particulars of the alleged fraud could not be mentioned in the plaint and therefore, by this application for amendment, she wants to introduce those details of fraud.

5] The application was resisted by the present petitioner, who is defendant in the suit, on the ground that, earlier also respondent-plaintiff has filed two applications for amendment, one is at Exh.29 and the other at exh.75. Application Exh.29 was rejected as particulars of amendment were not given and the application Exh.75 was rejected as being not maintainable. Hence, this being the third application for amendment, the trial Court should not have allowed the same.

6] However, perusal of the impugned order passed by the trial Court reveals that Application exh.29 came to be rejected on technical grounds as respondent-plaintiff has not stated the particulars which she wanted to introduce by way of amendment in the application; whereas application at Exh.75 was containing the particulars which she wanted to introduce by way of amendment, but the said application did not disclose the reasons or ground for

allowing amendment. Hence, it was rejected.

7] Thus, it can be seen that earlier two applications were rejected merely because two separate applications were filed, one for giving reasons as to why amendment is necessary, but without giving particulars of the amendment to be introduced in the plaint and another application, giving particulars of amendment, but without giving reasons for amendment. Hence both the applications came to be rejected on technical grounds being not drafted properly. Now a composite application at Exh.80 was filed by the respondent and the trial Court has rightly considered and allowed it having regard to the fact that by proposed amendment, respondent-plaintiff is only introducing particulars or details in respect of the documents relating to development agreement and power of attorney, which according to her were obtained fraudulently. The fact that these documents were obtained fraudulently was clearly stated in paragraph No.10 of the plaint itself. Therefore, the proposed amendment is more or less clarificatory in nature and does not change the nature of the suit.

8] There is noting on record to show that the trial is commenced or issues are framed in the suit. The amendment therefore being necessary to decide the controversy involved in the

suit finally between the parties, no fault can be found in the impugned order passed by the trial Court, of allowing the said application for amendment, and that too, subject to costs.

9] The Writ Petition, therefore being without merits, stands dismissed.

10] Rule stands discharged.

[DR.SHALINI PHANSALKAR-JOSHI, J.]