

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

WRIT PETITION NO. 12956 OF 2016

Pramod Mohandas Shah	...	Petitioner
V/s.		
Nandkumar Ramchandra Dhumal & Anr.	...	Respondents

Mr.Anand S. Shalgaonkar for the Petitioner.
Mr.Surel Sunil Shah for the Respondents.

CORAM : DR.SHALINI PHANSALKAR-JOSHI, J.

DATE : 11th JANUARY, 2018.

P.C. :

1] Heard learned counsel for the Petitioner and the Respondents.

2] By this Writ Petition filed under Article 227 of the Constitution of India, the Petitioner is challenging the order dated 31st March, 2016 passed by Jt. Civil Judge Junior Division, Wai, below Exhibit-23 in Regular Civil Suit No.99 of 2012. The said application was filed by the present Petitioner, who is the original Plaintiff in the trial Court, for amendment of plaint in order to introduce certain particulars relating to the oral agreement that took place between the parties and the specific performance of which is sought in the plaint. It is stated that the proposed amendment is merely of a clarificatory

nature and it does not change the nature of the suit. Therefore, such amendment should have been allowed by the trial Court, as those details of the oral agreement remained to be included in the plaint due to inadvertence, when the plaint was drafted. It is submitted that these details are going to explain the circumstances in which the suit transaction took place.

3] However, as rightly observed by the trial Court, this amendment application is filed after issues are framed on 24th June, 2011 and the trial has commenced and the matter was fixed for evidence of the Petitioner. The suit is filed in the year 2010 and the written statement thereto was also filed in the same year. In view thereof, the bar raised by the Proviso to Order-VI Rule-17 comes into play. As held by the Apex Court in the case of *Vidhyabai & Ors. Vs. Padmalatha & Anr. [(2009) 2 SCC 409]*, the Proviso to Order-VI Rule-17 is couched in a mandatory form. Hence the Court's jurisdiction to allow such an application is taken away unless the conditions precedent laid down therein therefor are satisfied viz. Court must come to a conclusion that inspite of due diligence the party could not have raised the matter before the commencement of the trial.

4] In view thereof, it was necessary for the Petitioner to show that despite exercise of due diligence, he could not have inserted these

details earlier or at the time of filing of the suit. Merely making a vague averment that due to inadvertence these details could not be introduced in the plaint cannot be sufficient to prove the exercise of due diligence sans an averments in the application to show that despite due diligence, the Petitioner could not have sought this amendment at an earlier stage, such amendment application cannot be allowed in view of the clear embargo laid down in view of Proviso to Order-VI Rule-17 of C.P.C.. As held by the Apex Court in the case of *Vidyabai & Ors. Vs. Padmalatha & Anr. (supra)*, the Proviso appended to Order-VI Rule-17 C.P.C. restricts the power of the Court. It puts an embargo on exercise of its jurisdiction. The Court's jurisdiction in a case of this nature is limited. Thus, unless the jurisdictional fact, as envisaged therein, is found to be existing, the Court will have no jurisdiction at all to allow the amendment of the plaint. The impugned order passed by the trial Court, therefore, does not call for any interference.

5] At this stage, learned counsel for the Respondents points out that in a suit bearing Regular Civil Suit No.120 of 2009, which is filed by the Respondents against the present Petitioner for possession of the same suit property, the Petitioner has filed application at Exhibit-47 for amendment in the written statement for introducing the same details and the said application was also rejected by the trial

Court on the same ground. The Petitioner has challenged the said order also in this Writ Petition. Though, it is true that the Petitioner should have filed the separate Writ Petition for challenging the said order, now already as this Court has held that the similar order passed in Regular Civil Suit No.99 of 2010 is correct and it does not call for interference, hence the order passed below Exh.-47 in Regular Civil No.120 of 2009 also needs to be confirmed and does not call for interference.

6] Hence, the Writ Petition stands dismissed.

[DR.SHALINI PHANSALKAR-JOSHI, J.]