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

WRIT PETITION NO. 8435 OF 2017

Sudhakar L Bhosale and anr	...	Petitioners
V/s.		
Vikram V Bhosale and ors	...	Respondents

Mr. Shriram S. Chaudhari, for the
Petitioners.

Mr. Prashant R. Suryawanshi i/by Gajanan
Mahadev Savagave, for the Respondent Nos.
1 and 2.

CORAM : DR.SHALINI PHANSALKAR-JOSHI, J.

DATE : 25th JANUARY, 2018.

P.C. :

1] Heard learned counsel for the petitioners and
respondents.

2] By this Writ petition filed under Article 227 of the
Constitution of India, the petitioners are challenging the order dated
11.04.2017, passed by the Civil Judge Senior Division, Barshi below
Exh.178 in Special Civil Suit No.13 of 2012 (old R.C.S. No.373 of
2008).

3] Application at Exh.178 was filed by the present
petitioners under Order VI Rule 17 of the Code of Civil Procedure,

seeking amendment in the written statement.

4] The petitioners are the original defendant Nos.9 and 10. It was contended by them that defendant No.1 has sold the suit property to them for family necessity. However, they failed to elucidate the said aspect in their written statement. Though they had provided all the necessary information in this respect to their advocate at the time of drafting written statement, it was not reflected in their written statement. Now after change of advocate, they came to know about the omission of material particulars in the written statement; hence it is essential to allow them to amend the written statement.

5] This application was strongly resisted by the respondent herein and in my considered opinion, the trial Court has rightly rejected the same, as the proposed amendment is not only barred in view of the Proviso to Order VI Rule 17 CPC, but also in view of the fact that it was sought at a very belated stage when the suit was fixed for final arguments.

6] As observed by the trial Court, in paragraph No.4 of the impugned order, the suit was filed in the year 2008. By the order dated 3rd February, 2010 the suit was amended. In pursuance thereof the defendant Nos.9 and 10 appeared and filed their written statement at Exh.71 on 28.10.2010. Thereafter the issues were

framed on 25.9.2014 and recording of evidence was commenced. On 12.2.2015, the evidence of respondent-plaintiff was closed and on 2nd January 2017, the evidence of defendant No.10, the present petitioner No.2 was also closed. The trial Court has also considered aspect that after the cross examination of respondent No.1 was complete on 4th February, 2015, the defendants have examined till date 11 witnesses. At this stage the petitioners have filed this application for amendment of their written statement, hence it necessarily follows that it will cause great prejudice to the respondents.

7] Apart from that, no sufficient explanation is also given for not seeking such amendment at an earlier stage. The Proviso to Order VI Rule 17 clearly lays down that once the trial is commenced, an application for amendment cannot be allowed unless the Court comes to conclusion that despite exercise of due diligence parties could not have brought these facts to the notice of the Court at an earlier stage.

8] The Apex Court was, in the case of ***Vidyabai and Others vs. Padmalatha and Another, (2009) 2 SCC 409***, while considering the effect of this Proviso, pleased to observe that, “this proviso is couched in a mandatory form and as a result, the Court's jurisdiction to allow such an application for amendment is taken away, unless the conditions precedent therefore are satisfied and the said conditions are that the Court must come to the conclusion that

in-spite of due diligence, the parties could not have raised the matter before commencement of the trial”.

9] It is categorically held by the Apex Court that it is a jurisdictional fact and parties seeking amendment in the pleading after trial has commenced, has to cross the embargo laid down in the Proviso and thereafter only Court gets jurisdiction to decide such application for amendment.

10] In the instant case no explanation about exercise of due diligence is offered by the petitioners. Mere change of advocate cannot be a sufficient ground for the Court to infer the exercise of due diligence, especially when the suit is pending since 2008. Though the petitioners were brought on record in the year 2010, in the year 2017 after most of the trial is over, application for amendment is filed. The trial Court has, therefore, rightly exercised its discretion in rejecting the said application.

11] The impugned order passed by the trial Court therefore being just, legal and correct, no interference is warranted therein.

12] The writ petition stands dismissed.

[DR.SHALINI PHANSALKAR-JOSHI, J.]