

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

WRIT PETITION NO. 10924 OF 2017

Kanhur Narayan Domale	...	Petitioner
V/s.		
Ramdas Nivrutti Gore & Ors.	...	Respondents

Mr.Vikas B. Tapkir for the Petitioner.
Mr.Pramod J. Pawar for the Respondents.

CORAM : DR.SHALINI PHANSALKAR-JOSHI, J.

DATE : 16th 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 23rd December, 2016, passed by 3rd Jt. Civil Judge Junior Division, Khed, Dist. Pune, below Exhibit-40 in Regular Civil Suit No.267 of 2010.

3] The application at Exhibit-40 was filed by the present Petitioner under Order-6 Rule-17 of Civil Procedure Code (for short "C.P.C.") for amendment in the plaint. The said application was

strongly resisted by the Respondents/Defendants and the trial Court has vide its impugned order rejected the same, only on the ground that the application is filed at the belated stage, after the trial has commenced and therefore it is barred as per the Proviso to Order-6 Rule-16 of C.P.C..

4] The submission of learned counsel for the Petitioner is that the Petitioner has, already in plaint itself, stated about the registered sale-deed dated 19th October, 1983 and the consequences thereof. Now he is seeking the amendment only to clarify certain facts and to bring further details on record. Therefore, according to learned counsel for the Petitioner, in view of judgment of the Apex Court in the case of *Abdul Rehman and Another V/s. Mohd. Ruldu & Others, (2012) 11 SCC 341*, the bar of Proviso to Order-6 Rule-17 of C.P.C. will not come into play. In this judgment it was held by the Apex Court that, when the amendment is sought only for making clear and explicit what was already implicit in the plaint and the nature of the suit is not changing, then such amendment can be allowed, even after the commencement of the trial.

5] The facts of the present case disclose that the bar of Proviso to Order-6 Rule-17 of C.P.C. clearly comes into play in the

present case, as the trial has already commenced; the issues were framed on 23rd February, 2012; thereafter, the Plaintiff has also filed his affidavit of examination in chief on 13th January, 2015. Then, the matter was fixed for cross-examination. At that time, on 8th October, 2015, the application for amendment is filed. Surprisingly, the entire application is conspicuously silent as to what due diligence was exercised by the Petitioner to bring the facts to the notice of the Court earlier. If, at the time of filing, as per the plaint itself, the Petitioner was very much aware of all these facts, then there is no explanation at all as to why he has not filed such application for amendment at earlier stage. Entire application for amendment is conspicuously silent about exercise of due diligence.

6] As held by the Apex Court in the case of *Vidyabai & 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. 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.

7] In view thereof, the conduct of the Petitioner also does not entitle him to get such application for amendment allowed at this belated stage. The trial Court has, therefore, rightly rejected his application.

8] The Writ Petition, being devoid of merit, stands dismissed.

[DR.SHALINI PHANSALKAR-JOSHI, J.]