

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

WRIT PETITION NO. 10819 OF 2017

Jindal South and West Steel Ltd.	...	Petitioner
V/s.		
Smt.Indira Raghunath Bargude & Anr.	...	Respondents

- Ms.Manisha Jagtap a/w. Mr.Akshay Kahodia i/b. J. Shekhar & Co. for the Petitioner.
- Mr.Rajesh Bhaskar Parab for the Respondents.

CORAM : DR.SHALINI PHANSALKAR-JOSHI, J.

DATE : 4th JANUARY, 2018.

ORAL JUDGMENT :-

1] Rule. Rule made returnable forthwith. With the consent of learned counsel for the Petitioner and for the Respondents, heard finally at the stage of admission itself.

2] By this petition, filed under Article 227 of the Constitution of India, the Petitioner is challenging the order dated 17th August, 2017, passed by the Gram Nyayalay Nyayadhikaran, Ratnagiri, below Exhibit 58 in Regular Civil Suit No.93 to 2013. The application below Exhibit 58 was filed by the Petitioner under Order-VI Rule-17 of Civil Procedure Code (for short "C.P.C.") for carrying out necessary

amendment in the written statement. The Petitioner is Defendant No.1 before the trial Court. According to the Petitioner, the proposed amendment is for the purpose of giving details about the relationship between the Plaintiff and one Barkya Baba Bargude and to show that Barkya Baba Bargude was the Karta of Joint Family and in that capacity he has executed the sale-deed of the suit property in favour of the Petitioner. According to the Petitioner, at the time of filing the written statement, the Petitioner was not aware of this detail genealogy and the relationship between Respondents/Plaintiffs and this Barkya Baba Bargude and therefore, by carrying out the necessary amendment he wanted to introduce the details about the said relationship and the circumstances that resulted into execution of the sale-deed by Barkya Baba Bargude in favour of the Petitioner.

3] This application came to be resisted by the Respondents/Plaintiffs on the count that the trial of the suit has already commenced, even the evidence of Respondents/Plaintiffs was recorded. The matter was posted for evidence of the Defendant/Petitioner and at this stage, by moving such application the Petitioner was trying to introduce a totally new story. It was submitted that the very case of the Respondent/Plaintiff is that she is the sole owner of the suit property and the record of rights also stands in her name alone. Therefore, Barkya Baba Bargude had no right to

execute the sale-deed of the suit property. Hence, the proposed amendment will change the nature of the suit and therefore, on merits also the application for amendment needs to be dismissed.

4] After hearing the learned counsel for both the parties, the trial Court was pleased to reject the said application on two counts. First, that the amendment was sought at a belated stage and therefore, bar created under Proviso to Order-VI Rule-17 of C.P.C. becomes applicable. Secondly, on merits also, it was held that the proposed amendment is going to change the nature of the suit and accordingly on both these counts, the trial Court found it fit to reject the application.

5] While challenging this order of the trial Court, the submission of the learned counsel for the Petitioner is that the proposed amendment is necessary to decide all the questions raised in controversy between the parties finally and the refusal to permit the amendment would create endless complications. In support of this submission learned counsel for the Petitioner relied upon the judgment of the Apex Court in the case of *Usha Devi vs. Rijwan Ahamd & Ors.* [(2008) 3 SCC 717].

6] Per contra, learned counsel for the Respondents has supported the impugned order of the trial Court by pointing out that

the Petitioner has not only sought the amendment at belated stage; when the matter was posted for recording evidence of Defendants but thereafter also the Petitioner has sought about eight adjournments before the trial Court, which clearly indicate the intention on the part of the Petitioner which is to prolong and protract the hearing of the suit. According to learned counsel for the Respondents, even on merits as the proposed amendment is going to change the nature of the suit itself, the trial Court has rightly rejected the said application.

7] In this case, it is an undisputed fact that the trial of the suit has already commenced. Not only that, the evidence of Respondents/ Plaintiffs is recorded and now the matter is posted for recording the evidence of the Petitioner/Defendant. At this stage, the amendment application is moved with a bare and vague averment that the Petitioner was not earlier aware about the details of genealogy and relationship between Barkya Baba Bargude and the Respondents/ Plaintiffs. Now, the question for consideration is whether such amendment can be allowed at this stage, especially having regard to the Proviso to Order-VI Rule-17 of C.P.C., which clearly lays down that no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that inspite of due diligence the party could not have raised the matter before the commencement of the trial.

8] Thus, in view of Proviso to Order-VI Rule-17 of C.P.C., a clear embargo is laid down that, once the trial has commenced, no amendment in the pleading shall be allowed, unless the party makes out a case that despite due diligence, he could not have sought such amendment earlier. As held by the Apex Court in the case of *Vidyalbai & 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.

9] In this case, except for some vague and bare averment in the application for amendment that at the time of filing initial written statement, the Petitioner was not aware of the detailed genealogy between the Plaintiffs and Barkya Baba Bargude, there is nothing on record to show that the Petitioner has exercised the due diligence to know such genealogy and despite that he could not get the details. As observed by the trial Court, the conduct of the Petitioner also does not show that he has exercised due diligence at any time. The suit was filed in the year 2013 and now it is mostly at the stage of

completion of trial as the evidence of the Plaintiffs is already recorded and now the matter is posted for recording the evidence of the Petitioner/Defendant. Therefore, here it is apparent and clear that the Petitioner has failed to cross the most vital embargo laid down in the Order-VI Rule-17. 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 put 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. In such situation, the trial Court has rightly rejected the application of the Petitioner on this ground.

10] Even as regard the merits of the proposed amendment, though the submission of the learned counsel for the Petitioner is that it will not change the nature of the suit, the Order passed by the trial Court clearly reflects that now the Petitioner wants to introduce a new case that Barkya Baba Bargude has executed the alleged sale-deed in the capacity of Karta of Joint Family though it is the specific case of Respondent/Plaintiff that she is the sole owner of the suit property. She has laid evidence to that effect and then at this stage allowing the Petitioner/Defendant to introduce the case that it was Barkya Baba

Bargude, who was Karta of Joint Family and in that capacity he has executed the sale-deed of the suit property, is as good as to make out new case and causing grave prejudice to the Respondents/Plaintiffs. Therefore, on this count also, no ground is made out to introduce such amendment.

11] The trial Court has, therefore, after giving proper reasoning and valid ground rejected the Petitioner's application. The impugned order of the trial Court being just, legal and correct; no interference is warranted therein. Writ Petition, therefore, being without merits, stands dismissed.

12] Rule stands discharged.

[DR.SHALINI PHANSALKAR-JOSHI, J.]