

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

WRIT PETITION NO. 13963 OF 2017

Amit Mahadev Kale & Anr.	...	Petitioners
V/s.		
Jankabai Lahanu Pole	...	Respondent

- Mr.Y.B. Lingare for the Petitioners.

CORAM : DR.SHALINI PHANSALKAR-JOSHI, J.

DATE : 19th MARCH, 2018.

P.C. :

1] Heard learned counsel for the Petitioners.

2] By this Writ Petition, filed under Article 227 of the Constitution of India, the Petitioners are challenging the order dated 11th September 2017 passed below the Application Exhibit-55 and the order dated 16th August 2016 passed below the Application at Exhibit-50.

3] Both these Applications were filed by the Petitioners for amendment of the plaint under Order-6 Rule-17 of the Code of Civil Procedure (for short, "C.P.C."). The contentions raised in both the Applications are one and the same relating to the payment of

consideration amount.

4] It is pertinent to note that when the earlier Application at Exhibit-50 was rejected by the trial Court vide its order dated 16th August 2016, the Petitioner has not approached this Court challenging the said order but then filed another Application at Exhibit-55, again raising the same contentions. Naturally, the trial Court was constrained to reject this application. It is not therefore proper to challenge both the orders, without challenging the earlier order and filing repeated applications on the same contentions.

5] Moreover, the amendment which is sought is going to change the nature of the suit, in the sense that earlier in the plaint, the Petitioner has stated that the consideration amount for the transaction was fixed at Rs.8,00,000/-, he has paid the amount of Rs.4,00,000/- and the remaining Rs.4,00,000/- was to be paid after obtaining the requisite permission for the transaction. Now, by way of the amendment, he is contending that the consideration amount was fixed at Rs.4,00,000/- only and he has already paid the entire amount to the Respondent. This is going to change totally the contents of the plaint.

6] The amendment is also sought at the belated stage, after the evidence affidavit was filed and the matter was fixed for cross-examination i.e. after the trial has commenced and no explanation is given for the said delay in preferring such application at the belated stage. Therefore, the Proviso to Order-6 Rule-17 of C.P.C. comes into play which mandates that unless the Court comes to the conclusion that despite exercise of due diligence, the Petitioner could not have brought those facts to the notice of the Court at an earlier stage, the Court cannot grant such amendment in the pleadings, once the trial has commenced. In the present case, no such averment is made about the exercise of due diligence as to why the proposed amendment could not be brought at any earlier stage.

7] In view thereof, the trial Court has rightly rejected both the applications for amendment. In writ jurisdiction, no interference is warranted therein.

8] The Writ Petition therefore stands dismissed.

[DR.SHALINI PHANSALKAR-JOSHI, J.]