

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.6194 OF 2017

Alphatech Contractors Pvt. Ltd., Mumbai	 Petitioner
V/s.	
The State of Maharashtra & Ors.	 Respondents

Ms. Pooja Joshi, i/by Mr. Ashok M. Saraogi, for the Petitioner.

Ms. Geeta P. Sonawane, A.G.P., for the Respondent-State.

CORAM : DR. SHALINI PHANSALKAR-JOSHI, J.

DATE : 30TH JANUARY 2018.

P.C. :

1. Heard Ms. Joshi, learned counsel for the Petitioner, and Ms. Sonawane, learned A.G.P. for the Respondent-State.

2. By this Writ Petition, filed under Article 227 of the Constitution of India, the Petitioner is challenging the order dated 25th October 2016 passed by the Ad-Hoc City Civil Court, Borivali Division, Dindoshi, Mumbai, below Chamber Summons No.486 of 2016 filed in Summary Suit No.83 of 2014.

3. The said Chamber Summons was filed by the Petitioner in order to correct the typographical error, which was arising in the affidavit filed

in support of the plaint, as per the Schedule annexed with the Chamber Summons. By the said amendment, the Petitioner wanted to delete the sentence in paragraph No.1 that, *“for declaration and also for permanent order and injunction”*, in order to replace the same with *“for recovery of the amounts and for money decree”*.

4. The Trial Court, however, rejected the same on the count that, there is no such provision to amend the affidavit, similar to the provision for amendment of the pleading, as contained in Order 6 Rule 17 of the Civil Procedure Code, 1908.

5. However, this approach of the Trial Court is totally technical and unjustified. The amendment sought is not in the nature of any relief or any pleading as such, but, only to correct the typographical error, which was apparent on the face of record. If the Suit is filed of a summary nature, it follows that such Suit must be for recovery of the amount and cannot be for declaration or injunction and, therefore, those words appearing in the affidavit are definitely on account of the typographical error and correction of such error does not amount to amendment in the pleading or in the affidavit.

6. Hence, the Writ Petition is allowed.

7. In view of the erroneous approach adopted by the Trial Court in rejecting the Chamber Summons for correcting the typographical error, the impugned order passed by the Trial Court is quashed set aside. Chamber Summons No.486 of 2016 in Summary Suit No.83 of 2014 is allowed. Petitioner is permitted to carry out necessary amendment in the affidavit. Amendment to be carried out within a period of two weeks from the date of receipt of a copy of this order by the Trial Court.

[DR. SHALINI PHANSALKAR-JOSHI, J.]