

Maria S.

IN THE HIGH COURT OF BOMBAY AT GOA
WRIT PETITION NO.942 OF 2019

David Albuquerque alias David Albuquerque & ..Petitioners
Anr.

Versus

Mr. Paul Apollinaris Lobo & Ors. ...Respondents

Mr. John Abreu Lobo, Advocate for the Petitioners.
Mr. Sarvadnya D. Patil, Advocate for the Respondents No.1
and 2.

CORAM: M. S. SONAK, J

DATED: 27th July 2021

P. C.

- 1.** Heard Mr. John A. Lobo, learned Counsel for the petitioners.
- 2.** This petition challenges the order dated 24.07.2017 by which the learned Trial Judge dismissed the petitioners' application for leave to amend the written statement.
- 3.** Mr. Lobo, learned Counsel for the petitioners submits that if the amendment is allowed no prejudice will occasion the

respondents/plaintiffs. He submits that in the cross-examination, questions were posed by the petitioners about the factum of the petitioners taking care of the father of the plaintiffs and also spending monies for this purpose. Since, such suggestions were denied by the plaintiffs, it was necessary to amend the written statement.

4. The plaint in this suit was instituted in the year 2007. The suit is for recovery of certain amounts in respect of which the petitioners were indicated as nominees in the bank records. Apart from the fact that the issue of the petitioners having taken care of the plaintiffs' father or having spent certain amount on the plaintiffs' father being prima facie irrelevant, there is no explanation as to why such pleadings were not made in the written statement which was originally filed presumably sometime in the year 2007 itself.

5. The leave to amend was applied for after the trial has commenced. There is nothing in the application to explain due diligence. Merely because the witness denied a particular suggestion, does not confer any cause of action for seeking an amendment of this nature.

6. Besides, the impugned order records that the petitioners had tried to produce documents on the same issue and such attempt was not permitted by the Trial Court. The learned Trial Judge has observed that this is yet another attempt to re-introduce the same issue.

7. Having regard to the provisions of Order 6 Rule 17 of the Code of Civil Procedure including the proviso thereto, no case is made out for allowing such an amendment. There is no jurisdictional error in the view taken by the learned Trial Judge which calls for any interference under Article 227 of the Constitution of India.

8. Therefore, this petition is liable to be dismissed and is hereby dismissed.

9. There shall be no order as to costs.

M. S. SONAK, J.