

Vinita

**IN THE HIGH COURT OF BOMBAY AT GOA.**

**WRIT PETITION NO. 725 OF 2019.**

COSME RUMALDO SILVEIRA., ...Petitioner.  
VS  
ABHIJIT JAYANT NAIK @  
BABLO @ ABHIJIT NAIK  
AND 7 ORS., ...Respondents.

Mr. D. Vernekar, Advocate for the petitioner.  
Mr. V. Rodrigues, Advocate for the respondents.

**CORAM: MANISH PITALE, J.**

**Date: 3<sup>rd</sup> FEBRUARY, 2022**

**P.C.**

Heard learned counsel for the parties.

2. By this Writ Petition, the petitioner(original defendant) has challenged order dated 4.5.2019, passed by the Court of Senior Civil Judge, Panaji whereby an application for amendment of plaint at Exh. 46-D has been allowed.

3. Mr. D. Vernekar, learned Counsel for the petitioner submits that impugned order is cryptic and without any reasons at all. The Court below has simply stated that since the application for amendment of the plaint is moved at pre-trial stage, it deserves to be granted. It is highlighted on behalf of the petitioner that in the reply filed to the application for amendment of plaint, the petitioner has specifically raised objection to the effect that

prayers sought to be added by way of amendment were barred by limitation. It was submitted that there is no reference to the said specific objection raised on behalf of the petitioner, in the impugned order, and that therefore, the impugned order deserves to be set aside.

4. Mr. V. Rodrigues, learned Counsel for the respondents submits that since the application for amendment was considered and granted at pre-trial stage, it was obviously not hit by proviso to Order 6 Rule 17 of the CPC. It was submitted that considering the prayers made in the original plaint, the prayers sought to be added by way of amendment could certainly be permitted.

5. In so far as limitation is concerned, it was submitted that this Court could observe that the question would be kept open for consideration at the stage of trial.

6. Having heard the learned Counsel for the parties and having perused the material on record, this Court is of the opinion that the aforesaid Court could not have passed the impugned order in the manner in which it has been passed. A perusal of the impugned order would show that it is not only cryptic, but, it does not advert to the specific objection raised on behalf of the petitioner in reply to the application for amendment. The Court

has simply stated that the amendment application has been moved at pre-trial stage and that the petitioner would have sufficient opportunity to rebut the contents permitted by way of amendment, by additional written statement or amendment of the same. There is no reference to the specific objection regarding limitation raised on behalf of the petitioner.

7. There can be no doubt about the fact that when the amendment is allowed and further prayer clauses are permitted to be added to a plaint, it has the effect of such prayers having been raised when the plaint was originally filed. This certainly would have an effect on the aspect of limitation sought to be raised on behalf of the petitioner. The least that the aforesaid Court was expected to do was to deal with such objection, rather than passing a cryptic and unreasoned order.

8. Hence, the Writ Petition is allowed and the impugned order is quashed and set aside. The matter is remanded to the aforesaid Court for deciding the application for amendment afresh. The said Court is expected to consider the specific objection raised on behalf of the petitioner and to decide the application for amendment strictly in accordance with law. It is clarified that

this Court has not expressed any opinion on merits on the specific objection raised on behalf of the petitioner.

9. The aforesaid Court shall decide the application for amendment afresh expeditiously and preferably within a period of eight weeks from today.

**MANISH PITALE J.**