

AGK

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

WRIT PETITION NO.8760 OF 2023

Radheshyam Ramlal Dhanuka

... Petitioner

V/s.

Alok Jajodia & Ors.

... Respondents

Mr Prashant G. Pandey with Mr. Ashish Jain and Ms.
Latika Birje for the petitioner.

Ms. Swati Sawant i/by Ms. Vrishali Raje for respondent
Nos.2 and 3.

CORAM : AMIT BORKAR, J.

DATED : SEPTEMBER 21, 2023

P.C.:

1. By the impugned order, the City Civil Court rejected application for amendment of the plaint.

2. Learned advocate for the petitioner invited my attention to the earlier order passed by the Court which refers to liberty granted to the petitioner to file application for amendment. Based on such liberty, he filed application for amendment. According to him, the facts referred in the affidavit in support of the chamber summons disclose due diligence as contemplated by the proviso to Order 6 Rule 17 of the Code of Civil Procedure, 1908. According to him, the Trial Court has not considered the judgment in the case of

Life Insurance Corporation v. Sanjeev Builders though it was relied upon by the petitioner.

3. On consideration of the impugned order, it appears that the Trial Court held that by way of proposed amendment plaintiff intends to insert 22 paragraphs in the plaint. The plaintiff was aware about these facts before filing application of amendment; however, pleadings of due diligence is absent in the affidavit.

4. Learned advocate for the petitioner invited my attention to at least seven paragraphs in the affidavit. According to him, explanation furnished in paragraphs 11 to 33 of the affidavit provides due diligence as contemplated under proviso to Order 6 Rule 17 of the Code of Civil Procedure, 1908.

5. The law in relation to the interpretation of expression “due diligence” has been delineated by the Apex Court in the case of **Vidya Bai & Ors. v. Padmalatha & Anr.** reported in (2009) 2 SCC 409. The Apex Court in the said judgment held that unless the Court comes to the conclusion that in spite of exercise of due diligence the party could not have raise matter before commencement of trial, the amendment cannot be allowed.

6. With the assistance of the learned advocate for the petitioner, I have considered the explanation furnished by the petitioner in support of his case of due diligence. The expression “due diligence” has been interpreted by the Apex Court in the case of **J Saumel & Ors. v. Gattu Mahesh & Ors.** reported in 2023 (2) SCC 300. The Apex Court in paragraphs 19 and 20 observed as under:

“19. Due diligence is the idea that reasonable investigation is necessary before certain kinds of relief are requested. Duly diligent efforts are a requirement for a party seeking to use the adjudicatory mechanism to attain an anticipated relief. An advocate representing someone must engage in due diligence to determine that the representations made are factually accurate and sufficient. The term “due diligence” is specifically used in the Code so as to provide a test for determining whether to exercise the discretion in situations of requested amendment after the commencement of trial.

20. A party requesting a relief stemming out of a claim is required to exercise due diligence and it is a requirement which cannot be dispensed with. The term “due diligence” determines the scope of a party’s constructive knowledge, claim and is very critical to the outcome of the suit.”

7. Having considered the explanation furnished in the affidavit in support of the amendment application, in my opinion, the explanation furnished do not fulfill the test laid down by the Apex Court in **J. Samuel & Ors.** (supra). On meaningful reading of the affidavit in support of the proposed amendment, I do not find any explanation regarding due diligence as required under provision to Order 6 Rule 17 of the Code of Civil Procedure, 1908. Therefore, no error can be found in rejecting the amendment application.

8. According to the learned advocate for the petitioner, the Trial Court has not considered judgment in the case of **Life Insurance Corporation** (supra). Having recorded finding of fact that the plaintiff has failed to submit any explanation regarding due diligence, in my opinion, non-consideration of judgment of the Apex Court will be of no help to the petitioner.

9. In my opinion, while considering the explanation as regards due diligence same needs to be provided either in an application for amendment or in the affidavit in support of the chamber summons. In absence of both, the paragraphs of the plaint cannot be considered to interpret due diligence. Even otherwise also having considered the said paragraphs, I find that there is no due diligence in the said paragraphs.

10. On overall consideration of the facts of the case, I do not find any error in the exercise of discretion by the Trial Court.

11. There is no merit in the writ petition. The writ petition is dismissed. No costs.

12. In view of dismissal of the *petition*, all interlocutory applications does not survive and are disposed of as infructuous.

(AMIT BORKAR, J.)

Note:- This order is modified as per order dated 4th October 2023. The correction in paragraph No. 12 is shown in italicize.