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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.15484 OF 2023

Shakil Ahmed Ataullah Ansari ... Petitioner
V/s.
Kalimullah Mohammed Mubin Ansari ... Respondent

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Signed by
SHAKIL AHMED
ATAULLAH ANSARI
Date: 12/11/2023
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Mr. Wasim Ansari, for Petitioner.

CORAM : AMIT BORKAR, J.

DATED : DECEMBER 13, 2023

P.C.:

1. By the impugned order, the Trial Court rejected application for amendment on the ground that the plaintiff has examined all witnesses and the matter is placed for evidence of defendant.
2. On perusal of the application for amendment, it appears that the defendant (plaintiff) has failed to plead “due diligence” as required by proviso to Order 6, Rule 17 of the Code of Civil Procedure, 1908.
3. The Apex Court in the case of **J. Samuel and Others Vs Gattu Mahesh and Others**, reported in (2012) 2 SCC 300 had occasioned to consider similar facts where the Apex Court refused to allow an application for amendment to correct typographical errors. The

Apex Court in paragraphs 19 and 20 held 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 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.”

4. There is no error of jurisdiction committed by the Trial Court.

5. The writ petition is, therefore, dismissed. No costs.

(AMIT BORKAR, J.)