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IN THE HIGH COURT OF BOMBAY AT GOA
WRIT PETITION NO.707 OF 2024

NILESH ARJUN GOVEKAR AND ANR ... PETITIONERS
Versus
AMBICA CHICKEN, PROPRIETARY
CONCERN, SAMEER KANTA KUNCOLIENKAR ... RESPONDENT

Mr Gaurang Panandiker and Ms Eesha Duckle, Advocate for the petitioners.

CORAM:- BHARAT P. DESHPANDE, J.
DATED :- 23rd October, 2024

P.C.

Heard Mr G. Panandiker, learned counsel for the petitioners.

2. Petition is filed challenging the order of the learned Trial Court whereby an application for amendment of Written statement is rejected.

3. Mr Panandiker appearing for the petitioners submits that proposed amendment is only by way of clarificatory in nature and even respondent/plaintiff has admitted that the Trade Mark comes within the category of a revised mark. However, he submits that petitioners desirous of only clarifying this aspect even though the plaintiff is already in the witness box.

4. Mr Panandiker submits that the learned trial Court dismissed the application on the ground that the petitioners failed to show due diligence.

5. Perusal of the application for the proposed amendment would clearly show that proposed amendments at paragraph 10(a) and 10(b) are in fact contents which are already admitted by the plaintiff in a document. Thus such proposed amendment which is already admitted by the plaintiff in a document, need not form part of the written statement.

6. The third paragraph 10(c) and (d) proposed amendments are in fact considered to be in the form of submissions/arguments in order to clarify as to whether such trade mark is a generic trademark or otherwise.

7. To my mind, the contents of paragraphs 10(c) and (d) would not be formed as pleadings per se as required under Order VI of CPC.

8. As far as the impugned order is concerned, the learned trial Court observed that the petitioners could have included the above pleadings in his written statement and that there is no due diligence shown or explained since the evidence of the plaintiff is already commenced.

9. Be that as it may, proposed amendment as filed in the application, appears to be in the form of admission in the document and secondly part of it is considered to be submissions/arguments. Accordingly, no interference is required in the order passed by the trial Court. Petition therefore deserves to be rejected. Accordingly, the petition stands rejected in the above terms.

BHARAT P. DESHPANDE, J.