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IN THE HIGH COURT OF BOMBAY AT GOA
WRIT PETITION NO.721 OF 2023

JANA GANESH NAIK (DEC.) BY LRS
AND 3 ORS

... PETITIONERS

Versus

ANTONIO MAURICIO BARRETO AND 2 ORS

... RESPONDENTS

Mr Ashwin D. Bhobe and Ms Shaizeen Shaikh, Advocate for the petitioners.

Mr Vivek Vas, Advocate for the respondent no.1.

CORAM:- BHARAT P. DESHPANDE, J.

DATED :- 2nd August, 2024

P.C.

Heard Mr Bhobe, learned counsel for the appellant and Mr Vas, learned counsel for respondent no.1.

2. Petition is filed challenging the impugned order dated 16.9.2023 thereby allowing amendment to the written statement even after the matter was argued finally.

3. Mr Bhobe, now fairly submits that since the suit was instituted on 16.6.2001 i.e prior to the proviso to Order VI Rule 17 of CPC as amended by Amended Act 2002, it would not be applicable so as to prove due diligence before allowing such amendment.

4. Mr Bhobe has placed reliance in the case of State Bank of Hyderabad Vs Town Municipal Council (2007) 1 SCC 765 in this regard wherein the Apex Court has observed that amendment done in

C.P.C. by Act of 2002 and more specifically adding proviso to Order VI Rule 17 of C.P.C. would not be applicable to the suit instituted prior to such amendment. Thus, a party who is praying for amendment in a suit filed prior to 2002 amendment in CPC, is not required to prove due diligence as an additional factor for the grant or refusal of the amendment.

5. Mr Bhobe, submits that such a position is clear and the contentions raised in the petition on the aspect of due diligence cannot be looked into.

6. [The challenge of such amendment raised by the petitioner on the other grounds could be kept open and also with regard to contentions of both the parties to challenge in case any adverse orders are passed against the plaintiff.

7. In view of the above submissions and the fact that the proviso to Order VI Rule 17 of CPC amendment by Amended Act of 2002 is not applicable to the present proceedings, petition stands disposed of. However, it is made clear that the contentions of the petitioner as well as the respondents with regard to such amendments on other aspects are kept open.

BHARAT P. DESHPANDE, J.