

VRJ

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIRCUIT BENCH AT KOLHAPUR
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.11114 OF 2025

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VAIBHAV RAMESH
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Date: 2025.11.10
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M/s. Pram Engineers
Through Proprietor
Pramod Dhanpal Mudhale
Age: 55 years, Occu: Business
R/at: 50, Bharat Housing Society,
10th lane, Rajarampuri, Kolhapur

Petitioner
...(Original Defendant)

V/s.

Haji Karim Abdul Shaikh
Age: 55, Occu: Construction Contractor
R/at. Plot No.6, Sasanenagar,
Saneguruji Vasahat, Kolhapur

Respondent
...(Original Plaintiff)

Mr. Drupad S. Patil (through V.C.) for the petitioner.

Mr. K. K. Sasavade with Mr. Rajwardhan K. Sasavade
with Mr. Amol Thorat and Mr. Satyajit S. Patil for the
respondent.

CORAM : S. G. CHAPALGAONKAR, J.

DATED : NOVEMBER 4, 2025

JUDGMENT:

1. **Rule.** Rule made returnable forthwith. Heard finally by
consent of parties.

2. The Petitioner, original Defendant, impugns order dated 15th January 2025 passed by learned Civil Judge, Senior Division, Kolhapur, on application at Exhibit 60 in Special Civil Suit No. 227 of 2016, whereby Petitioner's prayer seeking amendment in the written statement was rejected.

3. Respondent instituted Special Civil Suit No. 227 of 2016 before Civil Judge, Senior Division, Kolhapur, for recovery of Rs. 44,28,744/- along with interest thereon from Defendant. It is the contention of Plaintiff that he entered into an agreement with Defendant for construction of a shed on Plot No. B-94, leased by MIDC. An agreement dated 11th April 2013 has been deduced on letterhead. It was agreed that Plaintiff would carry out construction of a factory building admeasuring 6,133 square feet at the rate of Rs. 1,100/- per square foot.

4. Plaintiff completed 85% of the work and raised a demand for release of bill. However, Defendant failed to release bills towards completed construction as agreed between parties. As of May 2016, an amount of Rs. 34,99,744/- was due and recoverable from Defendant. Although a legal notice was issued, Defendant failed to arrange the amount, giving trivial reasons. Hence, the suit has

been instituted. Defendant disputed Plaintiff's claim; however, admitted that there was a contract for construction of a factory building. Defendant raised a plea that construction work was not carried as per requisite quality. The bill raised by Plaintiff was excessive and exorbitant. Defendant also alleged default in observing timeline and quality of construction work on the part of Plaintiff.

5. Learned Trial Court framed issues based on pleadings of the parties. Plaintiff recorded evidence of two witnesses. At this stage, petitioner-defendant filed an application seeking amendment in written statement based on stability report dated 23rd September 2021.

6. The plaintiff opposed said application.

7. Learned Trial Court, after considering rival contentions, rejected the application vide order dated 15th January 2025.

8. Mr. Patil, learned Advocate appearing for Petitioner, submits that the impugned order is not in consonance with the object and scheme of Order VI Rule 17 of the Civil Procedure Code, 1908. The proposed amendment would not result in any change in defence or stand of Defendant. The amendment sought is crucial for final

adjudication of the dispute. The present suit is filed for recovery of money based on construction carried out by Respondent. Petitioner seeks to bring on record a stability report of the construction obtained from an expert, which would facilitate determination of the real question of controversy between parties.

9. Per contra, Mr. Sasavade, learned advocate appearing for respondent, supports the impugned order and opposed the petition.

10. Having considered submissions advanced by learned advocates appearing for the respective parties, it can be observed that Respondent filed the suit for recovery of the amount towards construction dues raised by him at the behest of Petitioner. Petitioner disputed entitlement of Respondent to raise or receive the billed amount. On 10th July 2019, learned Trial Court framed issues based on pleadings of the parties. On 13th February 2023, Plaintiff filed his evidence affidavit, and after commencement of trial, on 23rd April 2024, an application seeking amendment in the written statement has been filed by Petitioner–Defendant to bring on record the stability report dated 23rd September 2021 issued by Yashodhan Constrolab, Kolhapur. The aforesaid sequence of

events depicts that Petitioner was in possession of stability report since September 2021. The evidence affidavit was filed by Plaintiff in February 2023. The trial had been commenced, at this stage, application seeking amendment in written statement was filed below Exhibit 60 under Order VI Rule 17 of the Civil Procedure Code, 1908 to incorporate pleadings based on stability report of 2021.

11. It is trite that an application for amendment of pleadings shall be liberally construed, more so when it pertains to an amendment in the written statement. However, the Court would have no jurisdiction to entertain such an application after commencement of the trial, unless the party seeking amendment of pleading satisfies due diligence contemplated in the proviso to Order VI Rule 17 of the Civil Procedure Code, 1908.

12. In present case, Defendant was in possession of stability report dated 23rd September 2021. He presented said report before Court on 20th November 2023, however on 23rd April 2024, after commencement of trial, he made an application seeking amendment in written statement to bring on record pleadings in relation to stability report. The application filed below Exhibit 60

sans requisite reasons to bring home due diligence on the part of Defendant. Nothing is discernible from the averments in application as to what prevented Defendant from seeking amendment in written statement prior to commencement of trial.

13. At this stage, Mr. Patil, learned Advocate appearing for Petitioner, placed reliance on the observations of the Hon'ble Supreme Court in *Dinesh Goyal alias Pappu v. Suman Agarwal (Bindal) and Others*, reported in 2024 SCC OnLine SC 2615, to contend that the due diligence clause in the proviso can be relaxed when an amendment is found necessary for final adjudication of the dispute between parties. However, it is difficult to countenance the submissions of Mr. Patil for the simple reason that in the case of *Dinesh Goyal alias Pappu (supra)*, the question of rights of parties over immovable property was under consideration, and one of the party sought to bring on record a Will executed in his favour to demonstrate his independent right in the suit property. In this background, Hon'ble Supreme Court observed that, to avoid multiplicity of litigation, such an amendment needs to be permitted.

14. In the present case, situation is altogether different.

Defendant seeks to bring on record evidence which was already in his possession much prior to commencement of trial. No explanation is given for delay in bringing amendment application, particularly, after commencement of trial, to add pleadings pertaining to stability report dated 23rd September 2021. In that view of the matter, no fault can be found in impugned order.

15. In result, writ petition stands rejected.

16. Pending interlocutory application(s), if any, stand disposed of.

(S. G. CHAPALGAONKAR, J.)