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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.12057 OF 2024

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Vitthal Damodar Thali, since deceased
through LRs Sudha Vitthal Thali & Ors. ... Petitioners

V/s.

Karanja Macchimar Sahakari
Society Limited ... Respondent

Mr. Rahul Thakur for the petitioners.

Mr. Drupad S. Patil with Mr. Prasad Keluskar for the
respondent.

CORAM : AMIT BORKAR, J.

DATED : JANUARY 24, 2025

P.C.:

1. By this writ petition, the petitioners are challenging the order passed by the Trial Court allowing the amendment application filed by the defendant in a suit for cancellation of the agreement after the evidence of the parties was over. It is contended by the petitioners that the order is contrary to the legal principles governing amendments, particularly under the proviso to Order VI Rule 17 of the Code of Civil Procedure, 1908.

2. Proviso to Order VI Rule 17 of the Code of Civil Procedure, 1908, requires the Trial Court to record a finding as to the due diligence of the party seeking amendment, once such an

application is filed after the commencement of the trial. The Supreme Court in **Vidyabai & Ors. v. Padmalatha & Anr.**, reported in **2009 (2) SCC 409**, has categorically held that the requirement of recording satisfaction regarding due diligence constitutes a jurisdictional fact. In the absence of such satisfaction, the Trial Court lacks the jurisdiction to allow the amendment. Furthermore, the Apex Court has emphasized that amendments sought at a belated stage should not ordinarily be granted if they cause prejudice to the opposite party or fundamentally alter the nature of the suit.

3. On perusal of the application for amendment, it is evident that the requirement of due diligence, as mandated by the proviso to Order VI Rule 17 of the Code of Civil Procedure, 1908, has not been satisfied. The application neither explains the reasons for the delay in seeking the amendment nor demonstrates why the proposed amendment could not have been incorporated at an earlier stage of the proceedings. The impugned order of the Trial Court also fails to record a finding regarding the due diligence of the defendant. It is well-settled that procedural law is intended to ensure justice, and allowing such belated amendments without adequate justification would defeat the very purpose of procedural safeguards. Hence, the Trial Court was not justified in allowing the amendment.

4. Hence, the following order is passed:

- a) The impugned judgment and order dated 18th January 2023, passed by the Trial Court below Exhibit 125 in Regular

Civil Suit No. 45 of 2012, is quashed and set aside

b) It is made clear that the respondent shall have the remedy to seek appropriate relief in furtherance of the pleadings sought to be incorporated by way of the amendment application, by instituting a separate civil suit, if permissible under the law.

5. The writ petition accordingly stands disposed of in the above terms. No costs.

(AMIT BORKAR, J.)