



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.16365 OF 2024**

Sanjay Baburao Walke ... Petitioner
versus
Punja Rajaram Walke and Ors. ... Respondents

Ms. Naina P. Boraste with Mr. Girish R. Agrawal, for Petitioner.

CORAM: N.J.JAMADAR, J.

DATE : 21 JANUARY 2025

P.C.

1. Heard the learned Counsel for the Petitioner.
2. The challenge in this Petition is to an order dated 7 August 2022 passed by the learned Civil Judge, Jr. Division, Dindori, on an application preferred by the Petitioner/Defendant to amend the written statement, whereby the said application came to be rejected, primarily on the ground that there was no due diligence on the part of the Defendant No.1 in seeking the proposed amendment.
3. The suit is instituted seeking, inter alia, declaration that the Sale Deed dated 26 March 1997 executed in favour of Defendant No.1 is void ab initio. The Defendants filed written statement on 28 December 2009. Evidence commenced. The Defendants preferred an application seeking amendment in the written statement to elaborate the circumstances in which Mutation Entry No.115 (Exhibit 55) came to be certified. By the impugned order dated 7

August 2022, the learned Civil Judge rejected the application as the Defendants sought to amend the written statement after 13 years of the filing of the written statement and commencement of the trial.

4. Learned Counsel for the Petitioner submitted that the proposed amendment does not change the nature of the defence. In fact, it is in elaboration of the defence which is already on record. Therefore, no prejudice would be caused to the Plaintiffs/Respondents in the event the amendment in the written statement is allowed. Learned Counsel for the Petitioner placed reliance on the decision of the Supreme Court in the case of State of Bihar and Ors. V/s. Modern Tent House and Anr.¹, and the decisions of the learned Single Judges of this Court in the cases of Zainabbi Mohammed Bashir and Ors. V/s. Shivkumar Bankatlal Jaiswal and Ors.² and Maria Santana Lobo and Ors. V/s. Cofre De Capela De S. Joao Baptista De Umtavaddo Calangute @ Capela De Sao Joao Baptista Do and Ors.³ to bolster up the submission that even when the amendment is sought after the commencement of the trial if the amendment is necessary for determining the real question in controversy and the amendment is in the nature of elaboration of the pleadings already on record, the Court can allow the amendment.

5. There can be no quarrel with the aforesaid propositions. Clearly, the

1 (2017) 8 SCC 567

2 2022(1) ALL MR 671

3 2019(7) ALL MR 534

interdict contained in the proviso to Order VI Rule 17 of the Code of Civil Procedure, comes into play. Unless the condition stipulated therein, namely, the satisfaction of the Court that in spite of the due diligence the Defendant could not have raised the matter, which is sought to be introduced by way of amendment, before the commencement of the trial, the amendment cannot be allowed. The proviso to Rule 17, in a sense, operates as a jurisdictional condition.

6. In the case of Vidyabai and Ors. V/s. Padmalatha and Anr.⁴, the Supreme Court has enunciated the nature of the interdict contained in the proviso to Rule 17 of Order VI as under :

“10. By reason of the Civil Procedure Code (Amendment) Act, 2002 (Act 22 of 2002), Parliament inter alia inserted a proviso to Order 6 Rule 17 of the Code, which reads as under :

“Provided that no application for amendment shall be allowed after the trial has commenced, unless the court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of the trial.”

It is couched in a mandatory form. The Court's jurisdiction to allow such an application is taken away unless the conditions precedent therefor are satisfied viz. it must come to a conclusion that in spite of due diligence the parties could not have raised the matter before the commencement of the trial.

19. It is the primal duty of the court to decide as to whether such an amendment is necessary to decide the real dispute between the parties. Only if such a condition is fulfilled, the

4 (2009) 2 SCC 409

amendment is to be allowed. However, proviso appended to Order VI, Rule 17 of the Code restricts the power of the court. It puts an embargo on exercise of its jurisdiction. The court's jurisdiction, in a case of this nature is limited. Thus, unless the jurisdictional fact, as envisaged therein, is found to be existing, the court will have no jurisdiction at all to allow the amendment of the plaint."

7. Reverting to the facts of the case, it is evident that the proposed amendment was sought by the Defendant after 13 years of the filing of the written statement. Mutation Entry No.115 (Exh. 55) was referred to by the Plaintiff in the plaint itself. The Defendant was fully aware the circumstances in which the said Mutation Entry was certified and relied upon by the Plaintiff.

8. If the application for amendment in the written statement is appraised through the prism of the satisfaction of the condition, in the light of the aforesaid incontrovertible facts, it becomes abundantly clear that the averments as to due diligence and the cause on account of which the Defendants could not have raised the matter before the commencement of the trial, are conspicuous by their absence. The application singularly lacks in reason which could satisfy the said condition.

9. Thus no cause, much less justifiable one, can be said to have been ascribed to seek amendment after the commencement of the trial. The learned Civil Judge, thus, committed no error in rejecting the application for

amendment. Resultantly, no interference is warranted in exercise of supervisory jurisdiction.

10. The Writ Petition, thus, stands dismissed.

(N.J.JAMADAR, J.)