



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 15490 OF 2025

Sushila Gopal Tejale

Age: 68 Years, Occupation: Housewife
Residing at Flat No. 1401, Tower No.3,
Sagar Darshan CHS Ltd, Sector-18,
Nerul, Navi Mumbai – 400 706.

..Petitioner

Versus

1. Babanbai Sakharam Chandramore
Age: 70 Years, Occupation : Housewife

2. Mangesh Alias Jitendra Sakharam
Chandramore
Age: 40 Years, Occupation : Business

3. Anand Alias Anil Sakharam Chandramore
Age: 35 Years, Occupation : Business

4. Chandrakant Sakharam Chandramore
Age: 40 Years, Occupation : Business

5. Vijaya Ramkrishna Kedare
Age: 35 Years Occupation : Housewife,
All above Nos. 1 to 5 residing at Dasak,
Rajwada, Jail Road, Nashik Road, Nashik.

6. Ravindra Dagadu More (Deceased)
Through its legal representatives

6A: Laxmi Ravindra More
Age: 47 Years, Occupation : Housewife.

6B: Satyam Ravindra More
Age: 29 Years, Occupation : Labour.

6C: Surekha Ravindra More
Age: 26 Years, Occupation : Education.

6D: Deepak Ravindra More
Age: 25 Years, Occupation : Education.

6E: Monika Ravindra More
Age: 23 Years, Occupation : Education.
All 6A to 6E residing at Building No. 109,
Room No. 20, 4th Floor, RBI Building,
Kurla East, Mumbai – 400 024.

7. Vimlabai Bajirao More
Age: 60 Years, Occupation Housewife

8. Anita Sunil Kharat
Age: 31 Years, Occupation Housewife

9. Rajesh Bajirao More
Age: 29 Years, Occupation Labour

10. Sunita Bajirao More
Age: 28 Years, Occupation: Labour
All 7 to 10 residing at C.R. Quarters,
A/19, Vidyavihar, Railway Quarters,
Mumbai – 400 077.

11. Chabubai Amruta Pagare
(Deceased, through legal heirs)

11A Avinash Amruta Pagare,
Age: 45 Years, Occupation : Service

11B Jyoti Prakash Shinde
Age: 40 Years, Occupation: Service.

11C. Pankaj Amruta Pagare,
Age: 35 Years, Occupation: Service
All 11A to 11C residing at Samangaon,
At Post-Samangaon, Nashik.

12. Kaushabai Yashwant Pagare,
Age: 65 Years, Occupation: Housewife,
Residing at Makaran Colony, Gosavi
Mala, Upanagar, Nashik.

13. Suman Shankar Jamdhade
Age: 63 Years, Occupation: Housewife
Residing at 67, Yerwada, Opp Durga
Mata Mandir, GPS Colony, Lal Church
Daund, Pune.

14. Kamal Gajanan Shinde,
Age: 55 Years, Occupation: Housewife,
Residing at Dasak Rajwada, Jail Road,
Nashik Road, Nashik.

...Respondents

WITH

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Mr. Shubhankar Avhad, for the Petitioner in both Petitions.
Mr. Girish R Agrawal, for Respondent Nos. 1, 2, 6A, 7, 11A-11C, 13
and 14 in both Petitions.

CORAM : N. J. JAMADAR, J.

RESERVED ON : 25th NOVEMBER 2025

PRONOUNCED ON : 11th DECEMBER 2025

JUDGMENT:

1. Rule. Rule made returnable forthwith and, with the consent of
the learned Counsel for the parties, heard finally.

2. As the challenge in these Petitions is to the orders passed by the learned Civil Judge, Senior Division, Nashik, in the same Suit, i.e., Special Civil Suit No. 87 of 2010 and the determination of one bears upon the other, the Petitions were heard together and are being decided by this common judgment.

3. The background facts necessary for the determination of these Petitions can be stated as under:

3.1 The properties bearing Survey Nos. 78/13, 78/17 and 78/16 situated at village Dasak, District Nashik, more particularly described in paragraph 2 of the Plaint, are the ancestral properties of the Defendants - Respondents.

3.2 The Defendants intended to sell the suit properties. On 24th March 2000 and 5th May 2000, the Defendants executed three Agreement for Sale in favour of the Petitioner. The consideration was accepted by the Defendants in cash and by way of cheques. Sakharam Waman Chandramore, the predecessor-in-interest of Defendant Nos. 1 to 4, had acknowledged the responsibility to complete the transaction and execute the conveyance. In the year 2007, Sakharam Chandramore had filed an Application before the District Collector to grant permission to transfer the suit properties. However, Sakharam passed away.

3.3 The Defendants thereafter avoided to complete the transaction and execute conveyance in favour of the Plaintiff. Thus, the permission to transfer the suit properties could not be obtained from the District Collector. Despite notice dated 24th March 2009, the Defendants failed and refused to execute the conveyance. Hence the suit for specific performance of the contract contained in the Agreements for Sale dated 24th March 2000 and 5th May 2000.

3.4 During the pendency of the said Suit, the Plaintiff filed an Application for temporary injunction. By an order dated 21st June 2012, the learned Civil Judge was persuaded to allow the Application and the Defendants were restrained from alienating or otherwise creating any third party interest in, or encumbrance over, the suit properties till the final decision of the Suit.

3.5 Asserting that despite the order of temporary injunction, the Defendants have executed a General Power of Attorney in favour of Deepaksingh Ashoksingh Pardeshi on 19th January 2018 and thereby authorised the said Power of Attorney holder to remove the impediment in the transfer of the suit lands by obtaining necessary permission and execute and register instruments, the Petitioner filed two Applications. First, an Application to implead the said Power of Attorney holder Deepaksingh Pardeshi as a party-Defendant to the Suit under the provisions of Order I Rule 10(2) of the Code of Civil Procedure, 1908

(“the Code”) (Exhibit “232”) and, second, an Application to amend the Plaint under the provisions of Order VI Rule 17 of the Code (Exhibit “245”) so as to bring the subsequent developments in the form of execution of the Power of Attorney in favour of said Deepaksingh Pardeshi and the alleged encroachment committed by the Defendants over the suit properties.

3.6 By an order dated 7th July 2025, the Application for impleadment of Deepaksingh Pardeshi (Exhibit “232”) came to be rejected by the learned Civil Judge, opining *inter alia* that the Defendants claimed that the Power of Attorney was not in operation and, in any event, the Power of Attorney cannot be sued in his personal capacity, *de hors* the executant. Thus, the third party was neither a necessary nor a proper party to the Suit.

3.7 Being aggrieved, the Plaintiff has preferred Writ Petition No. 15490 of 2025.

3.9 By another order dated 18th August 2025, the learned Civil Judge rejected the Application for amendment in the Plaint. It was observed that the proposed amendment was not necessary for the determination of real question in controversy between the parties and it would change the nature of the Suit. The said order dated 18th August 2025 is assailed in Writ Petition No. 15491 of 2025.

4. I have heard Mr. Shubhankar Avhad, the learned Counsel for the Petitioner, in both the Petitions, and Mr. Girish R. Agrawal, the learned Counsel for Respondent Nos. 1, 2, 6A, 7, 11A-11C, 13 and 14 in both the Petitions. With the assistance of the learned Counsel for the parties, I have perused the material on record.

CONSIDERATIONS IN WRIT PETITION NO. 15460 OF 2025:

5. Mr. Avhad, the learned Counsel for the Petitioner, submitted that the learned Civil Judge refused to exercise the discretion vested in the Court to implead the third party, despite a clear case for impleadment of the said third party, as a necessary party, was made out. Mr. Avhad would urge that the learned Civil Judge lost sight of the fact that it was the case of the flagrant violation of the interim order passed by the Trial Court not to create third party interest in the suit properties.

6. Taking the Court through the averments in the Power of Attorney executed in favour of the third party by few of the Defendants, especially, the acts which the third party was empowered to do and execute on behalf of the Defendants-Executants, it was submitted that the breach of the interim injunction order was clear and explicit. Since, the Defendants have executed an irrevocable Power of Attorney, it implied that interest was created in the subject matter of agency.

Therefore, presence of the third party was necessary for an effectual and complete adjudication of the dispute, urged Mr. Avhad.

7. To buttress these submissions, Mr Avhad placed reliance on a Division Bench judgment of this Court in the case of **Shri Swastik Developers and Ors Vs Saket Kumar Jain**.¹ Reliance was also placed on a judgment of the Supreme Court in the case of **Robin Ramjibhai Patel Vs Anandibai Rama Alias Rajaram Pawar & Ors**.²

8. As against this, Mr. Agrawal, the learned Counsel for the Respondent Nos. 1, 2, 6A, 7, 11A-11C, 13 and 14, would urge that, in the case at hand, there is no transfer of interest in the suit lands by the Defendants in favour of the third party. At best, a Power of Attorney has been executed in favour of the third party. It does not imply that the Defendants have conveyed their right, title and interest in favour of a subsequent purchaser. In these circumstances, the decisions in the cases of **Shri Swastik Developers (Supra)** and **Robin Ramjibhai Patel (Supra)** do not govern the fact-situation at hand. Thus, the learned Civil Judge was justified in rejecting the Application for impleadment of the third party as he cannot be said to be either a necessary or proper party.

9. In the matter of addition or deletion of a party, it is well neigh settled that, it is not a matter of initial jurisdiction but that of judicial discretion to be exercised keeping in view all the relevant

¹ 2014 (2) Mh L J 968.

² (2018) 15 SCC 614.

considerations. In a suit for specific performance, the impleadment of a subsequent transferee is, generally, considered necessary, especially, when the Plaintiff seeks to implead such transferee.

10. In view of the provisions contained in Section 19 of the Specific Relief Act, 1963, specific performance of a contract may be enforced against any other person claiming under a party to the contract, by a title arising subsequently to the contract, except a transferee for value, who has paid his money in good faith and without notice of the original contract. In substance, to convey complete title to the plaintiff, in the event of grant of decree of specific performance of the contract, the transferee is made to join in the execution of the instrument alongwith the vendor. From this standpoint, ordinarily, where the plaintiff moves for impleadment of a subsequent transferee such prayer is considered favourably in the absence of the factors which otherwise render such impleadment unjustifiable.

11. In the case of **Durga Prasad vs. Deep Chand**³ the Supreme Court underscored the necessity of impleading the transferee of the vendor in a suit for specific performance of the contract to sell immovable property, in the following words:

“42. In our opinion, the proper form of decree is to direct specific performance of the contract between the vendor and the plaintiff and direct the subsequent transferee to join in the conveyance so as to pass on the title which resides in him to the

3 AIR 1954 SC 75.

plaintiff. He does not join in any special covenants made between the plaintiff and his vendor; all he does is to pass on his title to the plaintiff. This was the course followed by the Calcutta High Court in **Kafiladdin v. Samiraddin** AIR 1931 Cal 67(C) , and appears to be the English practice. See Fry on Specific Performance, 6th edition, page 90, Paragraph 207 ; also **Potter v. Sanders** (1846) 67 ER 1057 (D). We direct accordingly.

(emphasis supplied)

12. In the case of **Dwarka Prasad Singh vs. Harikant Prasad Singh**⁴ after following the decision in the case of **Durga Prasad (supra)** while resolving the controversy with regard to the question whether in a suit for specific performance against a purchaser with notice of a prior agreement of sale the vendor is a necessary party or not, another Three-Judge Bench of the Supreme Court enunciated the law as under:

“..... This Court has, however, held in **Lala Durga Prasad & Another v. Lala Deep Chand & Others** ([1954] S.C.R, 360) that in a suit instituted by a purchaser against the vendor and a subsequent purchaser for specific performance of the contract of sale the proper form of the decree is to direct specific performance of the contract between the vendor and the plaintiff and further direct the subsequent transferee to join in the conveyance so as to pass on the title which resides in him to the plaintiff. This was the course followed by the Calcutta High Court in the above case and it appears that the English practice was the same. Thus according to this decision, the conveyance has to be executed by the vendor in favour of the plaintiff who seeks

4 (1973) 1 SCC 179.

specific performance of the contract in his favour and the subsequent transferee has to join in the conveyance only to pass his title- which resides in him. It has been made quite clear that he does not join in any special covenants made between the plaintiff and his vendor. All that he does is to pass on his title to the plaintiff. In a recent decision of this Court in **R. C. Chandiok & Another v. Chunni Lal Sabharwal & Others** ([1971] 2 SCR 573) while passing a decree for specific performance of a contract a direction was made that the decree should be in the same form as in Lala Durga Prasad's case. It is thus difficult to sustain the argument that the vendor is not a necessary party when, according to the view accepted by this Court, the conveyance has to be executed by him although the subsequent purchaser has also to join so as to pass on the title which resides in him to the plaintiff.”

13. In the case of **Kasturi Vs Iyyamperumal**,⁵ the Supreme Court considered the question of impleadment when a third party sought impleadment in a Suit for specific performance of the contract. The Supreme Court drew a distinction between a subsequent purchaser, who claimed through the vendor, and a person, who claimed adversely to the claim of the vendor. The observations of the Supreme Court in paragraph 7 are instructive and hence extracted below.

“7. In our view, a bare reading of this provision namely, second part of Order 1 Rule 10 sub-rule (2) of the CPC would clearly show that the necessary parties in a suit for specific performance of a contract for sale are the parties to the contract or if they are dead their legal representatives as also a person

5 (2005) 6 SCC 733.

who had purchased the contracted property from the vendor. In equity as well as in law, the contract constitutes rights and also regulates the liabilities of the parties. A purchaser is a necessary party as he would be affected if he had purchased with notice of the contract, but a person who claims adversely to the claim of a vendor is, however, not a necessary party. From the above, it is now clear that two tests are to be satisfied for determining the question who is a necessary party. Tests are —(1) there must be a right to some relief against such party in respect of the controversies involved in the proceedings (2) no effective decree can be passed in the absence of such party.

(emphasis supplied)

14. The Division Bench of this Court in the case of **Shri Swastik Developers (Supra)**, on which reliance was placed by Mr. Avhad, followed the aforesaid line of judgments.

15. In the case of **Robin Ramjibhai Patel (Supra)**, after following the decisions in the case of **Kasturi (Supra)**, it was enunciated that **Kasturi (Supra)** recognises the special status of the Plaintiff and when the Plaintiff wants to implead certain persons as defendants on the ground that they may be adversely affected by the outcome of the suit, then interest of justice also requires allowing such a prayer for impleadment so that the persons likely to be affected are aware of the proceedings and may take appropriate defence as suited to their vendors.

16. The aforesaid authoritative pronouncements of the Supreme Court make it beyond cavil that the transferee of the vendor is a

necessary party to a suit for specific performance of the contract for sale of immovable property. The necessity of impleadment of the transferee arises from the point of view of making conveyance of title in favour of the plaintiff complete and prefect and also from the point that such a decree may impair the rights of the transferee and, therefore, his presence is necessary for a complete and effectual adjudication of the dispute.

17. In the light of the aforesaid position in law, reverting to the facts of the case at hand, from the assertions in the Application for impleadment and the documents pressed into service on behalf of the Plaintiff it becomes abundantly clear that the Plaintiff intends to implead Mr. Deepaksingh Pardeshi as the person in whose favour few of the Defendants have executed Power of Attorney; under the terms of the Power of Attorney, the said third party has been empowered to execute and register conveyance and there might have been conveyances executed by the said third party in the capacity of the Power of Attorney holder. At best, it was sought to be urged that the said Power of Attorney may be construed as an Agreement for Sale in favour of Mr. Deepaksingh Pardeshi.

18. Evidently, the Power of Attorney has been executed without any consideration. *Prima facie*, it does not appear that under the said Power of Attorney an interest in the Suit lands is created in favour of the third

party. It is true the third party has been empowered to do and execute comprehensive and diverse acts for and on behalf of the Defendants-Executants. However, that does not change the jural relationship between the Defendants-Executants and the third party, namely, the principal and agent.

19. In the aforesaid view of the matter, it cannot be said that the third party is the subsequent purchaser, or for that matter, any interest in the suit properties has been created in favour of the third party, so as to render his impleadment necessary for a complete and effectual adjudication of the dispute.

20. In this backdrop, Mr. Agrawal, would urge that, even when an Agreement for Sale is executed in favour of a third party, such third party does not become a necessary party to the Suit in the absence of any conveyance in favour of such party. To this end, reliance was placed by Mr. Agrawal on a judgment of a learned Single Judge of this Court in the case of **Jagannath Khanderao Kedar and Anr Vs Gopinath Bhimji Kedar Alias Gopinath Bhagwant Mohite & Ors.**⁶ In the said case, where the third parties had sought impleadment on the strength of an Agreement for Sale executed by the Defendant, a learned Single Judge of this Court held that the third parties did not have any share or interest in the subject matter of the Suit as the Agreement for Sale does not create any interest in the property.

⁶ 2022(6) MhLJ 277.

21. The case at hand stands on a an even weaker foundation. The Defendants-Executants are the parties before the Court in the capacity of the principal. In the presence of the Defendants-Executants, the impleadment of the third party who is an agent of the Defendants, does not seem warranted.

22. In this view of the matter, the learned Civil Judge was justified in rejecting the Application for impleadment of the third party as a party-Defendant.

CONSIDERATIONS IN WRIT PETITION NO. 15491 OF 2025:

23. On the aspect of the amendment in Pleint, Mr. Avhad would urge the learned Civil Judge did not keep in view the well-recognized principles in the matter of amendment in the pleadings. By the proposed amendment, the Plaintiff intends to bring on record essentially the subsequent events. The Court must take into account the subsequent events which bear upon the determination of the rights and liabilities of the parties. The learned Civil Judge rejected the prayer for amendment by taking a constricted view of the matter, submitted Mr. Avhad.

24. To lend support to these submissions, Mr. Avhad, placed reliance on the judgments of the Supreme Court in the cases of **North Eastern**

Railway Administration, Gorakhpur Vs Bhagwan Das (Dead) By LRs⁷
and **Dinesh Goyal Alias Pappu Vs Suman Agarwal (Bindal) and Ors.⁸**

25. In contrast, Mr. Agrawal, the learned Counsel for the Respondents would support the impugned order. It was submitted that the Plaintiff did not satisfy the test of due diligence as the amendment was sought after the commencement of the trial, nay, at the fag-end of the trial. In the circumstances, the leaned Civil Judge was justified in rejecting the Application for amendment in the Plaint at a belated stage without the Plaintiff satisfying the requirement of due diligence. To bolster up this submission, reliance was placed on the judgment of the Supreme Court in the case of **Pandit Malhari Mahale Vs Monika Pandit Mahale & Ors⁹** wherein, after following the judgment in the case of **Vidyabai and Ors Vs Padmalatha and Anr¹⁰** the Supreme Court held that there being no finding by the Court that the Court was satisfied that, in spite of due diligence, the Party could not introduce amendment before commencement of the trial, the order of the Trial Judge was unsustainable.

26. At this juncture, it is necessary to note that in an earlier round of litigation before this Court, in Civil Writ Petition No. 1121 of 2025, in which the Petitioner-Plaintiff had assailed legality, propriety and

7 (2008) 8 SCC 511.

8 2024 SCC OnLine SC 2615.

9 AIR OnLine 2020 SC 847.

10 (2009) 2 SCC 409.

correctness of an order dated 25th October 2024 passed by the Trial Court, thereby setting aside “No Cross” order, this Court while dismissing the Petition requested the learned Civil Judge to make an endeavour to hear and decide the Suit as expeditiously as possible and, positively, within a period of six months from the communication of the said order. The Defendants were put to strict terms as to the cross-examination of the Plaintiff and her witnesses as well as adducing defence evidence.

27. In the impugned order, the Trial Court has referred to the order passed by the High Court directing the expeditious hearing and disposal of the Suit. In the reply to the Application seeking amendment in the Plaint, the Defendants have categorically contended that the Plaintiff did not turn up for cross-examination and an order was passed by the learned Civil Judge to discard the evidence of the Plaintiff and, thereupon, to prolong hearing in the Suit, the Plaintiff filed the instant Applications. The fact remains that the trial in the Suit has not only commenced but has been expedited and directed to be completed within a time-frame.

28. Keeping in view of the aforesaid backdrop, the legality, propriety and correctness of the impugned order is required to be evaluated. It is trite all amendments which are necessary for the determination of real question in controversy between the parties are required to be allowed,

unless the proposed amendment has the propensity to cause irretrievable prejudice to the adversary. The considerations like the proposed amendment would completely alter the nature and character of the suit, the relief sought to be claimed by way of proposed amendment is barred by law of limitation, the proposed amendment, if permitted, would embrace the trial, are few of the important factors, which also weigh in the exercise of the jurisdiction.

29. The stage at which the amendment is sought assumes significance, where the case is covered by the proviso to Order VI Rule 17 of the Code. The proviso envisages that, the Court shall not allow an application for amendment after the trial had commenced unless it comes to the conclusion that, in spite of due diligence, the party seeking the amendment could not have raised the matter before the commencement of the trial. In a sense, the element of due diligence and satisfaction by the Court about its existence, is a jurisdictional condition to permit the amendment in the pleadings after the commencement of the trial.

30. Ordinarily, mere delay in seeking amendment in the pleading, by itself, cannot be the sole ground on which the application for amendment can be rejected. However, where the proviso to Order VI Rule 17 of the Code comes into play, the jurisdictional fact needs to be satisfied. Unless the jurisdictional fact, as envisaged by the proviso to

Order VI Rule 17 is satisfied, the Court will have no jurisdiction at all to allow the amendment in the pleadings, post the commencement of the trial. **(Vidyabai and Ors (Supra)).**

31. In the case of **Chander Kanta Bansal Vs Rajinder Singh Anand**,¹¹ the Supreme Court expounded the import of the term 'due diligence' in the following words:

"15. As discussed above, though first part of Rule 17 makes it clear that amendment of pleadings is permitted at any stage of the proceeding, the proviso imposes certain restrictions. It makes it clear that after the commencement of trial, no application for amendment shall be allowed. However, if it is established that in spite of "due diligence" the party could not have raised the matter before the commencement of trial depending on the circumstances, the court is free to order such application.

16. The words "due diligence" have not been defined in the Code. According to Oxford Dictionary (Edn. 2006), the word "diligence" means careful and persistent application or effort. "Diligent" means careful and steady in application to one's work and duties, showing care and effort. As per Black's Law Dictionary (18th Edn.), "diligence" means a continual effort to accomplish something, care; caution; the attention and care required from a person in a given situation. "Due diligence" means the diligence reasonably expected from, and ordinarily exercised by a person who seeks to satisfy a legal requirement or to discharge an obligation. According to Words and Phrases by Drain-Dyspnea (Permanent Edn.13-A) "due diligence", in law, means doing everything reasonable, not everything possible. "Due diligence" means reasonable diligence; it means such

11 (2008) 5 SCC 117.

diligence as a prudent man would exercise in the conduct of his own affairs.

17. It is clear that unless the party takes prompt steps, mere action cannot be accepted and file a petition after the commencement of trial. As mentioned earlier, in the case on hand, the application itself came to be filed only after 18 years and till the death of her first son Sunit Gupta, Chartered Accountant, had not taken any step about the so-called agreement. Even after his death in the year 1998, the petition was filed only in 2004. The explanation offered by the defendant cannot be accepted since she did not mention anything when she was examined as witness.

18. As rightly referred to by the High Court in **Union of India vs. Pramod Gupta (dead) by LRs and Others, (2005) 12 SCC 1**, this Court cautioned that delay and laches on the part of the parties to the proceedings would also be a relevant factor for allowing or disallowing an application for amendment of the pleadings".

(emphasis supplied)

32. In the case of **Samuel And Ors Vs Gattu Mahesh & Ors**¹², the Supreme Court again emphasised that the term 'due diligence' is used in the Code so as to provide a test for determining whether to exercise the discretion in situations of requested amendment after the commencement of the trial. The observations in Paragraph Nos. 19 and 23 are material and hence extracted below:

"19. Due diligence is the idea that reasonable investigation is necessary before certain kinds of relief are requested. Duly diligent efforts are a requirement for a party seeking to use the

12 (2012) 2 SCC 300.

adjudicatory mechanism to attain an anticipated relief. An advocate representing someone must engage in due diligence to determine that the representations made are factually accurate and sufficient. The term 'Due diligence' is specifically used in the Code so as to provide a test for determining whether to exercise the discretion in situations of requested amendment after the commencement of trial.

...

23. Though the counsel for the appellants have cited many decisions, on perusal, we are of the view that some of those cases have been decided prior to the insertion of Order VI Rule 17 with proviso or on the peculiar facts of that case. This Court in various decisions upheld the power that in deserving cases, the Court can allow delayed amendment by compensating the other side by awarding costs. The entire object of the amendment to Order VI Rule 17 as introduced in 2002 is to stall filing of application for amending a pleading subsequent to the commencement of trial, to avoid surprises and that the parties had sufficient knowledge of other's case. It also helps checking the delays in filing the applications. [vide **Aniglase Yohannan vs. Ramlatha and Others**, (2005) 7 SCC 534, **Ajendraprasadji N. Pandey and Another vs. Swami Keshavprakeshdasji N. and Others**, **Chander Kanta Bansal vs. Rajinder Singh Anand**, (2008) 5 SCC 117, **Rajkumar Guraward (dead) through LRS. vs. S.K.Sarwagi and Company Private Limited and Another**, (2008) 14 SCC 364, **Vidyabai and Others vs. Padmalatha and Another**, (2009) 2 SCC 409, and **Man Kaur (dead) By LRS vs. Hartar Singh Sangha**, (2010) 10 SCC 512.

(emphasis Supplied)

33. On the aforesaid touchstone, if the averments in the Application for amendment in the Plaint are appraised, the only reason which can

be discerned from the Application is that the Plaintiff intends to bring on record events which have transpired after the institution of the Suit and that would facilitate the adjudication of the dispute effectively. The Court does not find any explanation much less a satisfactory one as to why the amendment was not sought by the Plaintiff before the commencement of the trial in the Suit. By the proposed amendment the Plaintiff intends to bring on record the factum of execution of the Power of Attorney by the Defendants-Executants in favour of the third party and the registration of the CR No. 190 of 2015 by Defendant No.13 against Defendant Nos. 2 to 5. No effort was made by the Plaintiff to show to satisfy the test of due diligence by ascribing reasons and circumstances for not seeking the amendment before the commencement of the trial.

34. Even otherwise having regard to the nature of the Suit, in the context of the stipulations in the Agreement for Sale purportedly executed in favour of Plaintiff whereunder the Defendants have agreed to deliver the possession of the suit lands at the time of execution of the Sale Deed, the proposed amendment does not seem to be necessary for the determination of real question in controversy between the parties. In the event the Plaintiff succeeds in the Suit on the existing pleading as well, the Court would be in a position to pass an effective decree to

execute the Sale Deed, after obtaining the permission of the Competent Authority, and deliver clear and vacant possession of the suit lands.

35. For the forgoing reasons, no interference is warranted in the impugned order whereby the Application for amendment in the Plaint came to be rejected.

36. Resultantly, both the Petitions deserve to be dismissed.

37. Hence, the following order:

: O R D E R :

Writ Petitions stand dismissed.

Rule discharged.

No costs.

[N. J. JAMADAR, J.]