



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 8179 OF 2015
WITH
CIVIL APPLICATION NO.8979 OF 2018

1. Baburao s/o Tatyaba Dongre,
Age : 68 years, Occu. : Agril.,
R/o Dongre Wasti, Pategaon,
Tq. Paithan, Dist. Aurangabad.
2. Shaikh Abbas s/o Shaikh Kasam,
Age : 50 years, Occu. : Agril.,
R/o Sadat Mohalla, Paithan,
Tq. Paithan, Dist. Aurangabad.
3. Babasaheb s/o Rambhau Garkal,
Age : 48 years, Occu. : Agril.,
R/o Dongre Wasti, Pategaon,
Tq. Paithan, Dist. Aurangabad.
4. Dinkar s/o Rambhau Garkal,
Age : 45 years, Occu. : Agril.,
R/o Dongre Wasti, Pategaon,
Tq. Paithan, Dist. Aurangabad.
5. Subhash s/o Tukaram Khedkar,
Age : 53 years, Occu. : Agril.,
R/o Dongre Wasti, Pategaon,
Tq. Paithan, Dist. Aurangabad.
6. Maruti s/o Tukaram Khedkar,
Age : 43 years, Occu. : Agril.,
R/o Dongre Wasti, Pategaon,
Tq. Paithan, Dist. Aurangabad.
7. Somnath s/o Ganpat Panjawale,
Age : 48 years, Occu. : Agril.,
R/o Dongre Wasti, Pategaon,
Tq. Paithan, Dist. Aurangabad
8. Ganesh s/o Bhausahab Bodkhe,
Age : 49 years, Occu : Agril.,
R/o Dongre Wasti, Pategaon,

Tq. Paithan, Dist. Aurangabad.

... Petitioners

(Orig. Resp. No. 1, 2, 4, 5,
6, 7, 9, 11)

Versus

1. Saraswati Sahakari Gruh Nirman
Sanstha Maryadit, Pategaon,
Tq. Paithan, Dist. Aurangabad.
Through its Chairman,
Dinkar s/o Sahebrao Nalawade,
Age : 60 years, Occu : Pensioner,
R/o. Lonar Galli, Paithan,
Tq. Paithan, Dist. Aurangabad. ... Orig. Disputant
2. Smt. Gulbasbai Prabhakar Thombre,
Age : 44 years, Occu : Labourer & Agril.,
R/o Dongre Wasti, Pategaon,
Tq. Paithan, Dist. Aurangabad. ... Orig. Resp. No. 3
3. Bhagwan s/o Dagdu Nagargoje,
Age : 77 years, Occu : Agril.,
R/o Dongre Wasti, Pategaon,
Tq. Paithan, Dist. Aurangabad. ... Orig. Resp. No.8
4. Prabhakar s/o Ganpat Panjawale
(Died) through legal heirs,
- 4A. Alka w/o Prabhakar Panjawale,
Age : 43 years, Occu : Labour,
R/o Dongre Wasti, Pategaon,
Tq. Paithan, Dist. Aurangabad.
- 4B. Pratibha Prabhakar Panjawale,
Age : 21 years, Occu : Household,
R/o Dongre Wasti, Pategaon,
Tq. Paithan, Dist. Aurangabad.
5. Kakasaheb s/o Ratan Adsul,
Age : 40 years, Occu : Agril.,
R/o Shivnagar, Narla, Tq. Paithan,
Dist. Aurangabad. ... Orig. Resp. No.12
6. Pundlik s/o Bhagwat Gite,
Age : 45 years, Occu : Agril.,
R/o Dhorgaon Jahangir,
Post : Changatpuri, Ta. Paithan.
Dist. Aurangabad ... Orig. Resp. No.13

7. Manisha D/o Prabhakar Panjawal,
Age : 18 years, Occu. : Education,
8. Puja D/o Prabhakar Panjawale,
Age : 13 years, Occu. : Education,
9. Onkar S/o Prabhakar Panjawale,
Age : 11 years, Occu. : Education,
All R/o. Kumbharwada, Paithan,
Tq. Paithan, District Aurangabad
U/G. of respondent No. 14.

... Respondents.

.....
Mr. B. V. Dhage, Advocate for Petitioners.
Mr. Mehul V. Navandar, Advocate for Respondent no.1.

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CORAM : ABHAY S. WAGHWASE, J.
RESERVED ON : 01 APRIL 2026
PRONOUNCED ON : 06 APRIL 2026

JUDGMENT :

1. Heard. Rule. The Rule is made returnable forthwith. At the joint request of both the sides, the matter is heard finally at the stage of admission.

2. Petitioners are hereby challenging the order dated 15.07.2015 passed by learned Co-operative Court, Aurangabad, on application below Exhibit-50 in Case No. CCA-115 of 2009.

3. Learned counsel for the petitioners pointed out that present respondent No.1 is a 'Sahakari Gruh Nirman Sanstha'

registered under Co-operative Societies Act and they filed a dispute before the learned Co-operative Court, Aurangabad by invoking section 91 of Maharashtra Co-operative Societies Act, 1960 against petitioners and respondent no.2 to 6, seeking declaration of ownership and possession in respect of suit property No.154 to the extent of 40 R out of total area admeasuring 5 H 77 R, situated at Pategaon, Tq. Paithan, Dist. Aurangabad and that the same is pending.

4. It is next pointed out that, it was the case of respondent no.1 that, the society had purchased the suit land from one Ramrao Panditrao Rawas on 04.11.1987 by virtue of sale deed and that the sale deed of the society pertains to Gut no.153. That, it is the case of respondent No.1 that the petitioners and other respondents are tried to grab the land.

5. That, present petitioners appeared and contested the above claim of respondent no.1 on the ground that they had purchased the suit property vide sale deed dated 25.07.2000 from Sakharam Satpute and Bajirao Gore and their sale deed pertains to Gut no.154. That, in fact, respondent no.1 society had purchased the land from Gut no.153, but subsequently claim was asserted over land Gut no.154.

6. Learned counsel pointed out that, in the above proceedings, present respondent no.1 had adduced his evidence in the form of examination-in-chief on 24.10.2013, however, later on, petitioners realized about certain basic new facts and the same were necessary to brought on record and hence, by invoking Order VI Rule 17 of the Code of Civil Procedure, application (Exh.50) was pressed into service.

7. Learned counsel emphasized that, to deal and decide the real issue and controversy between the parties, said amendment was necessary i.e. to dispute the claim of respondent - society, which was apparently based in absence of any foundation or legal document. Learned counsel pointed out that, by permitting said amendment, nature of the proceedings was not getting changed or altered. That, it was also essential to take effective cross of the respondents and hence, for above reasons, it is submitted that, learned Co-operative Court ought to have allowed the amendment. As according to him, no prejudice was likely to be caused to the other side.

8. Learned counsel for respondent No.1 would justify the order of rejection and submitted that, firstly, no case was made out so as to permit amendment in written statement. Secondly, there was no satisfactory explanation as to why amendment was necessary and

why it was not carried out prior to 28.04.2015. Thirdly, all material was well within the knowledge and possession of petitioners, but there was no due diligence so as to permit amendment.

9. Here, petitioners are questioning the order of learned Judge, Co-operative Court, dated 15.07.2015, by which application Exhibit-50 pressed into service by present petitioners for seeking amendment to carryout written statement, was rejected. Primarily the sole ground on which application is rejected is that, there was absence of due diligence, which disentitle the petitioners from carrying out the amendment.

10. Before advertng to the merits of the case, a brief snapshot of the settled legal position on the point of amendment, as provided under Order VI Rule 17, is reproduced. Law to this extent has been dealt by the Hon'ble Apex Court in the case of *Vidyabai and Ors. v. Padmalatha and Anr.*, (2009) 2 SCC 409, wherein the Hon'ble Apex Court, after advertng to the overarching the principles which govern the jurisdiction to permit amendment in the pleadings, including the decision of *Rajesh Kumar Aggarwal v. K.K. Modi*, (2006) 4 SCC 385, observed that, Court should allow amendment that would be necessary to determine the real question in controversy between the parties, however, the same has to be

indisputably would be subject to the condition that no prejudice is caused to the other side. The relevant observations of the Hon'ble Apex Court with regard to the effect of proviso appended to Order VI Rule 17 of the Code, for ready reference, are reproduced, as under :-

“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 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.”

11. In the case of ***Chander Kanta Bansal v. Rajinder Singh Anand***, (2008) 5 SCC 117, the Hon'ble 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 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)

12. In the case of *Samuel and Ors. v. Gattu Mahesh and Ors.* (2012) 2 SCC 300, 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 to 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 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.

20. A party requesting a relief stemming out of a claim is required to exercise due diligence and is a requirement which cannot be dispensed with. The term "due diligence" determines the scope of a party's constructive knowledge, claim and is very critical to the outcome of the suit.

21. In the given facts, there is a clear lack of 'due diligence' and the mistake committed certainly does not come within the preview of a typographical error. The term 'typographical error' is defined as a mistake made in the printed/typed material during a printing/typing process. The term includes errors due to mechanical failure or slips of the hand or finger, but usually excludes errors of ignorance. Therefore, the act of neglecting to perform an action which one has an obligation to do cannot be called as a typographical error. As a consequence the plea of typographical error cannot be entertained in this regard since the situation is of lack of due diligence wherein such amendment is impliedly barred under the Code.

22. The claim of typographical error/mistake is baseless and cannot be accepted. In fact, had the person who prepared the plaint, signed and verified the plaint showed some attention, this omission could have been noticed and rectified there itself. In such circumstances, it cannot be construed that due diligence was adhered to and in any event, omission of mandatory requirement running into 3

to 4 sentences cannot be a typographical error as claimed by the plaintiffs. All these aspects have been rightly considered and concluded by the trial court and the High Court has committed an error in accepting the explanation that it was a typographical error to mention and it was an accidental slip.

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)

13. Thus, as to what is meant by the phrase 'due diligence' which is reflected in the provision itself, is clarified in above rulings and precisely learned Judge, Co-operative Court, has rejected the application (Exh.50), on such sole ground.

14. Here, learned trial Court has also noted the events that took place post filing of the dispute and in paragraph No. 7 has noted that the dispute is instituted in 2009 and that present petitioners, who were respondents therein, had initially avoided service of summons and in spite of service, written statement was said to be filed on 05.02.2010, i.e. before a period of five years. Learned trial Court was required to impose costs for seeking adjournment to cross examine the disputant (present respondent No.1).

15. In view of above discussed settled law, it was incumbent upon the petitioners to satisfy the due diligence test, but the application, copy of which placed on record, is conspicuously silent regarding the circumstances on account of which, despite due diligence, the proposed amendment could not be sought at the earlier point of time. Admittedly, here, trial had commenced and present respondent No.1 had already adduced in examination-in-chief. There is no satisfactory explanation as to since after filing of written statement and even after evidence of present respondent No.1 has

been adduced, what endeavours were made to bring on record alleged new facts, which are claimed to be learnt subsequently, there is no plausible explanation for the same. When the provision casts a duty on a party to show that, despite due diligence, the written statement could not be amended within a reasonable time, and when it is not shown, such party is not entitled to receive favour even upon discretion. Though, courts have discretion to allow amendment and even when a liberal approach is expected, the rights of the opposite party cannot be eclipsed or could be lost sight of.

16. After going through the impugned order, this Court does not find any case being made out to amend the plaint and on the contrary, petitioners have failed to cross the initial threshold of due diligence. There being no infirmity in the impugned order, petition fails. Hence, the following order is passed :

ORDER

- (i) The Writ Petition is dismissed accordingly.
- (ii) Rule stands discharged.
- (iii) Civil Application No. 8979 of 2018 is disposed of.

(ABHAY S. WAGHWASE, J.)