



Santosh.

IN THE HIGH COURT OF BOMBAY AT GOA
WRIT PETITION NO.354 OF 2021
WITH
WRIT PETITION NO.261 OF 2021
WITH
MISC. CIVIL APPLICATIONS NO.217/2022 &1433/2024(F)
IN
WRIT PETITION NO.261 OF 2021

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| <p>1. Mr Antonetto J D’Souza, Son of Mathew Cajetan D’Souza, Age 68 years, Married, Indian National, and his wife;</p> <p>2. Mrs. Bernadette I D’Souza, Wife of Antonetto J D’Souza, 64 years of age, Married, Indian National, Residing at H.No.E-3/34, Tivai Waddo, Calangute, Bardez, Goa-403516.</p> <p style="text-align: center;">Vs.</p> <p>1. Mr Antonio G. Braganza (Deceased)</p> <p>2. Mrs. Aldila Braganza, Wife of Joseph Braganza, Aged 57 years, Married, Indian National,</p> <p>Both residing at H.No.E- 3/40A, Tivai Waddo, Calangute, Bardez, Goa- 403516.</p> | <p style="text-align: right;">.....Petitioners</p> |
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| <p>3. Mr. Joseph Baptista Braganza, Son of late Mr. Antonio Gregorio Braganza, Aged 61 years, Indian National. (married to and represented by his Power of Attorney holder vide Instrument dated 23/07/2018 Reg.No.5042/07/2018,</p> <p>Mrs Aldila Braganza, R/o. H.No.E-3/40A, Tivai Waddo, Calangute, Bardez, Goa-403516.</p> <p>4. Mr. Rex Perpet D'Souza, Son of Antonio L. D'Souza, Major of age, Married, Indian National, Resident of E-13, Pearl Houses, Dadar, Mumbai-400014.</p> <p>5. Mrs Carmelina Thereza D'Souza, Wife of Rex Perpet D'Souza, Major of age, Married, Indian National, Resident of E-13, Pearl Houses, Dadar, Mumbai-400014.</p> <p>6. Mr Nestor Reginaldo D'Souza, Son of Antonio L. D'Souza, Major of age, Married, Indian National, Resident of E-13, Pearl Houses, Dadar, Mumbai-400014.</p> <p>7. The Village Panchayat of Calangute, Through its Secretary, Calangute, Bardez, Goa.</p> | <p>Deleted.</p> <p>Amendment carried out as per order dated 11.10.21.</p> |
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| <p>8. The North Goa Planning and Development Authority, Through its Member Secretary, Office at Mala, Panaji Goa.</p> <p>9. The Chief Town Planner, Town and Country Planning Department, Panaji Goa.</p> <p>10.The Town Planner, Town and Country Planning Department, Mapusa, Bardez, Goa.</p> <p>11.The Chief Secretary, Government of Goa, Porvorim-Goa.</p> <p>12.Mrs. Maria D'souza, Daughter of late Mr. Antonio Gregorio Braganza, Aged 58 years, Indian National</p> <p>13.Mr. Anthony D'Souza, Aged 61 years, Indian National, Both resident of H.No.53/A, Bagawado, Aldona, Corjuem, Goa.</p> <p>14.Mrs. Philomena Lange, Daughter of late Mr. Antonio Gregorio Braganza, Aged 52 years, Indian National,</p> <p>15.Mr. Ottmar Langa, Major of age, German National, Both R/o. P.O. Box 51187, Dubai, U.A.E. (All Registered Addresses).</p> | <p>Deleted.</p> <p>Amendment carried out as per order dated 11.10.21.</p> <p>.....Respondents</p> |
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WRIT PETITION NO.354/2021

Mr. J. E. Coelho Pereira, Senior Advocate *with* Mr. Sagar Rivankar, **Advocate for Petitioners.**

Ms. Aldila Braganza-Respondent No.2 in person.

Mr. Geetesh Shetye, Additional Government Advocate *for the Respondent Nos. 9, 10 & 11.*

WRIT PETITION NO.261/2021

Mr. J. E. Coelho Pereira, Senior Advocate *with* Mr. Sagar Rivankar, **Advocate for Petitioners.**

Ms. Aldila Braganza-Respondent No.2 in person.

Mr. Shivdutt P. Munj, Additional Government Advocate *for the Respondent Nos. 9, 10 & 11.*

CORAM : VALMIKI MENEZES, J.

Reserved on : 5th July 2024

Pronounced on : 26th July 2024

JUDGMENT:

1. Heard Mr. J. E. Coelho Pereira, Senior Advocate for Petitioners in WP No. 354/2021 and WP No. 261/2021, Mr. Geetesh Shetye, Additional Government Advocate for the

Respondent Nos. 9, 10 & 11 in WP No. 354/2021, Mr. Shivdutt P. Munj, Additional Government Advocate for the Respondent Nos. 9, 10 & 11 in WP No. 261/2021 and Ms. Aldila Braganza-R2 in person.

2. These Petitions filed under Article 227 of the Constitution of India, arise from the same proceeding, being Civil Suit No.14/2016 pending before the Principal District Judge, North Goa. With the consent of all the parties, the same were taken up for final disposal. Hence Rule. Rule is made returnable forthwith, and with consent of the parties, the two Petitions are heard and disposed of by this common judgment. Writ Petition No.261/2021 lays challenge to an order dated 11/03/2020 passed by the District Court on an application dated 06/02/2020 for amendment of the plaint at Exhibit 138 of the record of the trial court; Writ Petition No.354/2021 lays challenge to an order dated 01/09/2021 passed by the District Court on an application dated 31/03/2021 for amendment of the plaint at Exhibit 152 of the record of the trial Court. Both these orders allow the applications for amendment of the plaint filed under Order 6, Rule 17 CPC. In these Petitions, the Petitioners Mr Antonetto J. D'Souza and Mrs Bernadette I. D'Souza are the original Defendants No.1 and 2 respectively, in Civil Suit No.14/2016; the Respondents No.1, 2 and 3 herein are the original Plaintiffs in that suit. These are the main contesting parties in the proceedings before this Court and before the District Court.

3. The facts that have led to the filing of the present two Petitions are briefly stated hereunder:

(A) Special Civil Suit No.134/2007/B came to be filed originally, by Respondents No.1 and 2 before the Civil Judge, Senior Division at Mapusa on 28/12/2007 for a declaration that the Plaintiffs were entitled to use, for the beneficial enjoyment of the suit property (Survey No.163/1), an easement of right of access of 1.5 metres over the properties bearing Survey Nos. 163/2, 164/1 and 163/4 belonging to the Petitioners and over the land under survey Nos.163/5, 163/6 and 163/7 belonging to some other owners; the easement claimed over the said properties runs, as stated by the Plaintiffs from their property under Survey No.163/1, across the aforementioned six parcels of land, upto the PWD road running from St. Anthony Chapel leading to the Calangute market and eventually to the Calangute beach. Further relief of permanent injunction was sought to restrain the Defendants from interfering with the suit access or obstructing the same over the Petitioners' land under Survey Nos.163/2 and 164/1 and for a mandatory injunction to direct the Defendants to open a gap of 1.5 metres in their compound wall between land under Survey No.163/1 and 163/2 at point 'A', depicted on the sketch annexed to the plaint. Apart from these reliefs, *inter alia*, the Plaintiffs had also sought compensation of Rs.2.00 lakhs.

The suit was filed on a cause of action, which the Plaintiffs claim, arose on 10/03/2007 when Defendant No.1 blocked the suit access by constructing certain illegal structures and impediments.

(B) A written statement was filed by Defendant No.1 on 30/01/2008 denying the claim of the Plaintiffs and submitting that the house of the Plaintiffs in land under Survey No.163/1 was constructed in violation of their approved plans, without leaving any setbacks. In the written statement, the Defendant No.1 has denied the Plaintiffs' claim to an easementary right of an access across his properties and has pleaded that the structures constructed on his properties are legal and permissible. The Defendants denied the existence of any easementary access claimed by the Plaintiffs.

(C) The plaint was subsequently amended and the Defendants 7 to 10 were added as parties; the newly added parties being Departments or functionaries of the Government of Goa, the suit was transferred to the District Court, the appropriate Court with jurisdiction to hear the matter, and was renumbered as Civil Suit No.14/2016.

(D) Whilst the suit was pending before the Civil Judge, Senior Division, issues came to framed on 26/03/2010 and the matter was set down for recording the Plaintiffs' evidence. The Plaintiff No.2 filed her Affidavit-in-lieu of evidence on 22/10/2010 (Affidavit of Mrs. Aldila Braganza Respondent No.2) and on 07/02/2011, her examination-in-chief was partly recorded. On that day, her Affidavit-in-evidence was taken on record and marked as Exhibit C-4 and her deposition was recorded along with the production of around 19 documents which were admitted to in evidence and marked as Exhibits. Further examination-in-chief was recorded of

this witness on 18/02/2011 when another 27 documents were produced and admitted in evidence; the cross examination of the Plaintiff No.2 Aldila commenced on 18/02/2011 and continued on 11/03/2011, 28/03/2011, 13/07/2011 and thereafter, the matter was adjourned from time to time. After transfer of the suit to the District Court, the matter has been pending cross examination of Plaintiff No.2.

(E) Whilst the Plaintiffs' evidence was in progress, they filed five amendment applications seeking amendment of the plaint on various dates, which are detailed below in a tabular form :

| Exhibit No. | Date of appln. For amendment. | Date of order thereon | Page no. in WP No. 354/2021 |
|-------------|-------------------------------|-------------------------------------|-----------------------------|
| D-142 | 13/4/2015 | 20/07/2015 | 49 |
| D-10 | 03/03/2016 | 15/09/2016 | 84 |
| D-63 | 17/06/2017 | 28/12/2017 | 109 |
| D-101 | 07/06/2018 | Application withdrawn on 21/10/2019 | 124 |
| D-103 | 21/10/2019 | 20/01/2020 | 148 |

All five applications referred above were dismissed by the District Court.

(F) On 06/02/2020, Plaintiffs filed the sixth amendment application, seeking amendment to the plaint under Exhibit 138 of the record of the trial Court on which the impugned order dated 11/03/2020 came to be passed allowing the amendment. This order has been challenged in Writ Petition No.261/21.

(G) On 31/3/2021, the seventh amendment application at Exhibit 162 of the record of the trial Court was filed by the Plaintiffs to amend the plaint on which the impugned order dated 01/09/2021 was passed by the District Court, which order has been assailed in Writ Petition No.354/2021.

It is in the light of the above undisputed facts that these two Petitions would now be decided.

4. In Writ Petition No.354 of 2021, an Affidavit-in-reply dated 10/12/2021 came to be filed by Respondent No. 2 Aldila Braganza, opposing the Petition contending therein that the Petitioners had concealed various facts from this Court whilst invoking its writ jurisdiction and were not entitled to any relief; in addition to this affidavit, the Respondent, Aldila Braganza has also filed a further Affidavit dated 19/06/2024 common to Writ Petition No. 354 of 2021 and Writ Petition 261 of 2021 to bring on record various orders passed in the connected proceedings before the Sessions Court at Mapusa, JMFC Mapusa and before the Goa Coastal Zone Management Authority (GCZMA).

5. In Writ Petition 261 of 2021, an affidavit-in-reply dated 10/01/2021 came to be filed by the Respondent No. 2, Aldila Braganza opposing the Petition on various grounds, *inter alia*, that the Petitioners have concealed certain facts and orders passed by Courts and are therefore not entitled to invoke this Court's writ jurisdiction. During the course of the hearing of the Petitions, the Respondent No.2, has declined to engage legal Counsel or to

represent by an Advocate under the Legal Aid Scheme, and has opted to argue the matter in person.

6. In addition to the oral submissions advanced by the parties, written submissions came to be filed by the parties which have also been considered.

SUBMISSIONS

7. Learned Senior Advocate Shri. J. E. Coelho Pereira for the Petitioners, in both Petitions makes the following submissions:

(I) That the Trial Court has improperly exercised its jurisdiction under Order 6, Rule 17 CPC by ignoring the mandate of the proviso therein; it was submitted that the proviso puts an embargo on a Court to allow an application for amendment after trial has commenced and such amendment can be considered only after the Court comes to a conclusion that despite due diligence, the party seeking amendment could not have averred the pleadings sought to be incorporated by way of an amendment, before commencement of the trial. It was submitted that both the applications for amendment *i.e.* Exhibit 138 dated 06/02/2020 and Exhibit 152 dated 31/03/2021 do not disclose the facts that demonstrate, that despite due diligence, the party seeking amendment could not raise the matter prior to trial. It was argued that there being no averments in the application to enable the Court to arrive at the conclusion and exercise jurisdiction in terms

of the proviso to Order 6, Rule 17 CPC, the Trial Court lacked the jurisdiction to proceed to decide the application. The impugned orders are, therefore, in proper exercise of the jurisdiction vested in the Trial Court.

(II) It was further submitted on behalf of the Petitioners that after the Written Statement came to be filed by the Petitioners, the trial Court dismissed the Plaintiffs' application for Temporary Injunction on 13/02/2008 and allowed the Petitioner's / Defendant's application for Temporary Injunction by order dated 06/11/2009 restraining the Plaintiffs from interfering in the Defendant's property. On an Appeal from Order No. 59/2008 being filed by the Plaintiffs to challenge this order, same was ultimately withdrawn before this Court on 04/05/2009 after which on 10/05/2012, this Court by an order in Misc. Civil Application No. 348/2011 in the said Appeal had granted liberty to the Plaintiffs to approach the Mamlatdar for the relief of right of way. It was submitted that all the averments in the draft amendment sought to be incorporated were known to the Plaintiffs, since 10/05/2012, but no steps were taken by the Plaintiffs to incorporate the same even in the year 2012. The trial having commenced, the bar incorporated in the proviso to Order 6, Rule 17 CPC would apply in the present case and the applications for amendment ought not to have been entertained.

(III) Learned Counsel for the Petitioners relies upon the Judgment of the Supreme Court in *Ajendraprasadgi N. Pandey Vs Swami Keshav Prakeshdasji N. and anr.* reported in (2006) 12 SCC 1 to

contend that post amendment to the Code of Civil Procedure, under the proviso to Order 6, Rule 17 CPC, unless the jurisdictional facts showing despite due diligence the party was prevented from raising the amendment before trial are pleaded in the application, the Courts would have no jurisdiction to proceed to even entertain an amendment application.

8. Countering these submissions, Ms. Aldila Braganza has taken me through the affidavits on record and submitted as under:

(I) That it was only in the year 2020, when the Plaintiffs inspected the Court file for the first time, that it came to their knowledge that the Defendants had committed fraud and forged permission dated 28/06/2006 of the GCZMA; consequently, there was no opportunity for the Plaintiffs to plead the averments sought to be incorporated as averments prior to 06/02/2020 when the first of the two amendment applications concerned in these Petitions came to be filed. It was further submitted by the Respondent No. 2 that during the proceedings before the Mamlatdar, instituted by the Plaintiffs under the Mamlatdar's Court Act, seeking a mandatory injunction for keeping an access open, the Petitioners had misled that Court and concealed the fact that their land fell within 500 meters of the High Tide Line and was not covered by the CRZ Notification 1991.

(II) It was submitted that the amendments sought to be incorporated are essentially facts and events which have taken place subsequent to the filing of the suit and since the Trial Court

has concluded that the facts in the amendment and the documents supporting the same were required for the purpose of determining the real question in controversy, the amendments had been correctly allowed by the impugned order and the same do not call for any interference in supervisory jurisdiction of this Court.

(III) That, since the Petitioners have concealed from a Writ Court, violations committed by them of the CRZ regulations, without having obtained the permissions from the authority carrying out their construction, this Court ought not to entertain the Petitions. The Respondents rely upon a Judgment dated 01/09/2022 of the Supreme Court in *Life Insurance Corporation of India V/s Sanjeev Builders Pvt. Ltd.* passed in Civil Appeal No. 5909 of 2022 to contend that the Courts must be extremely liberal in granting a prayer for amendment of pleadings if the Court is of the view that if such amendment was not allowed, that the party would suffer irreparable loss and injury.

CONSIDERATIONS AND CONCLUSIONS :

9. In the above backdrop, the two questions that would arise in these petitions, are:

- (a) Whether the applications for amendment dated 06/02/2020 (Exhibit 138) and 02/08/2021 (Exhibit 152) are in compliance with the provisions of Order 6, Rule 17 CPC and more particularly with proviso thereto?

(b) Whether the trial Court has acted within its bounds and passed the impugned order after correctly applying the proviso to Rule 17, Order 6 CPC to the facts of the present case?

10. To decide the above two questions, which arise in these Petitions, it would be apposite to quote the provisions of Rule 17, Order 6 CPC and make reference to a few decisions of various Courts on this provision :

*“17. **Amendment of Pleadings** : The Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties:*

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 trial.”

11. Rule 17 was substituted w.e.f. 1/7/2002 by the present provision, incorporating therein the proviso which creates a bar to allowing an application for amendment after trial has commenced. This bar is, however, not absolute, but can be surpassed only if the party who seeks the amendment demonstrates from the facts stated in the application how the pleadings to be amended, in spite of due diligence, could not have been raised before the trial commenced. For the trial Court to assume jurisdiction to entertain an application for amendment of pleadings after trial has

commenced, it must come to a conclusion, based on the facts stated in the application that in spite due diligence, the party seeking amendment was prevented from raising the matter before commencement of the trial.

12. In *Ajendraprasadji N. Pandey* (supra), the Supreme Court has examined the circumstances under which the applicant is precluded by the proviso to Rule 17 from seeking an amendment to his pleadings. At para 44 of the judgment, it has recorded, in detail, several dates, right from the presentation of the claim till the point where the depositions of the witnesses were recorded and certain other proceedings in the suit, on the basis of which the application for amendment was dismissed. The Supreme Court went on to hold that facts are required to be pleaded and grounds be raised in the amendment application to demonstrate that despite exercise of due diligence, the matter raised in the amendment could not be raised by the party prior to the commencement of the trial. It further held that the averments which are made in the application for amendment must satisfy the requirements of the proviso to Rule 17 and with such particulars which would satisfy the requirement of law that the matter sought to be introduced by the amendment could not have been raised earlier in spite of due diligence, are not found in the application, the application would not satisfy the requirements of law.

13. In *M. Revanna Vs. Anjanamma* reported in (2019) 4 SCC 332, considering the effect of the proviso to Order 6, Rule 17 CPC, the Supreme Court holds thus :

“7. Leave to amend may be refused if it introduces a totally different, new and inconsistent case, or challenges the fundamental character of the suit. The proviso to Order 6 Rule 17 CPC virtually prevents an application for amendment of pleadings from being 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. The proviso, to an extent, curtails absolute discretion to allow amendment at any stage. Therefore, the burden is on the person who seeks an amendment after commencement of the trial to show that in spite of due diligence, such an amendment could not have been sought earlier. There cannot be any dispute that an amendment cannot be claimed as a matter of right, and under all circumstances. Though normally amendments are allowed in the pleadings to avoid multiplicity of litigation, the court needs to take into consideration whether the application for amendment is bona fide or mala fide and whether the amendment causes such prejudice to the other side which cannot be compensated adequately in terms of money.”

In ***Vidyabai vs. Padmalatha*** reported in (2009) 2 SCC 409, the Supreme Court has held that the language of the proviso to Rule 17, Order 6, is couched in a mandatory form, taking away the jurisdiction of a court to allow an amendment application, unless, the conditions precedent stated in the proviso are satisfied. It observes thus:

“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 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 amendment is to be allowed. However, proviso appended to Order 6 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.”

As held by the Supreme Court, unless the jurisdictional facts are stated by the applicant in the application itself, to make out a case that despite due diligence, the facts could not be pleaded prior to commencement of trial, the Court would not have jurisdiction to proceed at all to even consider, let alone allow the amendment to the plaint.

14. What constitutes a “jurisdictional fact” has been elaborated by the Supreme Court in **Arunkumar vs. Union of India** reported in (2007) 1 SCC 732.

“74. A “jurisdictional fact” is a fact which must exist before a court, tribunal or an authority assumes jurisdiction over a particular matter. A jurisdictional fact is one on existence or non-existence of which depends jurisdiction of a court, a

tribunal or an authority. It is the fact upon which an administrative agency's power to act depends. If the jurisdictional fact does not exist, the court, authority or officer cannot act. If a court or authority wrongly assumes the existence of such fact, the order can be questioned by a writ of certiorari. The underlying principle is that by erroneously assuming existence of such jurisdictional fact, no authority can confer upon itself jurisdiction which it otherwise does not possess.

75. In *Halsbury's Laws of England*, it has been stated:

“Where the jurisdiction of a tribunal is dependent on the existence of a particular state of affairs, that state of affairs may be described as preliminary to, or collateral to the merits of, the issue. If, at the inception of an inquiry by an inferior tribunal, a challenge is made to its jurisdiction, the tribunal has to make up its mind whether to act or not and can give a ruling on the preliminary or collateral issue; but that ruling is not conclusive.”

76. *The existence of jurisdictional fact is thus sine qua non or condition precedent for the exercise of power by a court of limited jurisdiction.”*

Thus, applying this principle and reading the same into the provision stated in the proviso to Rule 17, Order 6 CPC., the Respondents in the present two petitions (original Plaintiffs/Applicants) were required to state such facts which constituted the condition precedent to overcome the bar under the proviso, and it would be only in such facts, if pleaded and considered by the trial Court to record its reasons for concluding that in spite of the due diligence the party seeking the amendment could not have raised these facts before commencement of trial,

that would confer the jurisdiction on the Court to allow the application for amendment.

15. The Supreme Court, in *Vidybai vs. Padmalatha* (supra) has further held that the date on which the issues are framed in a suit till the date of first hearing and filing of an affidavit-in-lieu of examination-in-chief of a witness, would amount to “commencement of proceeding” as envisaged in under the proviso to Rule 17.

In the present case, from a perusal of the Roznama of the case, there is no doubt that issues were framed in the suit on 26/03/2010 and the affidavit-in-lieu of examination-in-chief of the plaintiff Mrs. Aldila Braganza (Respondent No.2 herein) came to be filed on 22/10/2010. Thereafter, the same witness produced and got around 19 documents admitted to evidence and had the same marked as Exhibits. Further examination-in-chief was recorded of the witness on 18/02/2011 when another 27 documents were exhibited and admitted in evidence; the cross examination of the Plaintiff No.2 Aldila commenced on 18/02/2011 and continued on 11/03/2011, 28/03/2011 and 13/07/2011. Thus, clearly, there is no manner of any doubt that after issues were framed, the evidence of the plaintiff had commenced and the trial having commenced, the embargo under the proviso to Rule 17 would apply.

16. After the trial had commenced, five applications for amendment of the plaint to incorporate various facts were moved

by the Plaintiffs between 13/04/2015 and 21/10/2019, details of which are referred to in para 4 above, all of which came to be dismissed. One of these orders dated 22/07/2015, came to be challenged before this Court in Writ Petition No.686/2015, wherein this Court, after referring to the bar under the proviso to Rule 17, Order 6 CPC held that no reasons satisfying the test of due diligence were found stated in the application for amendment, resulting in the application being correctly dismissed by the trial Court. Thus, the previous conduct of the Respondents, it can be clearly inferred that they were well aware that the bar under Order 6, Rule 17 CPC would operate in the matter, since trial had commenced and would therefore had to justify and state the jurisdictional lapse to circumvent that bar under the proviso, in any subsequent applications for amendment.

17. In this background, to answer the questions before me, it requires the examination of the facts stated in the application dated 06/02/2020 and whether such facts would constitute the “jurisdictional facts” for the trial Court to surpass the bar to entertain the application for amendment in terms of the proviso to Rule 17.

Perusal of the application would reveal that in the first seven paragraphs of the application the Plaintiffs state the details of various proceedings before several Courts. In para 3 of the application, the Plaintiffs refer to the fact that the Goa Coastal Zone Management Authority has registered an FIR against Defendant No.2 and in para 4, the Plaintiffs state that the case was

dismissed for default in the year 2015 which was then restored by this Court and such facts are required to be incorporated in the plaint. In para 5 of the application, the Plaintiffs claim that the amendment contains new and special facts which have bearing on the case. In paras 6 and 7, the Plaintiffs state that they have no alternate remedy and the fact that the trial Court could also exercise its inherent jurisdiction under Section 151 CPC to allow the amendment. These are the only facts pleaded in the application, while rest of the application contains the Schedule of Amendment sought to be incorporated, which consists of facts dating from 30/03/2005 to 28/04/2015, all of which pertain to the period prior to, or during the cross examination of the Plaintiff. There is no fact stated in the application that any of the contents of the pleadings sought to be amended were not within the knowledge of the Plaintiffs prior to 06/02/2020 when the application was made or for that matter, if such facts came to the knowledge of the Plaintiffs after the trial commenced, as to the date on which these facts came within their knowledge.

18. On a plain reading of the application, there are no facts stated therein which would constitute the jurisdictional facts on the basis of which the Court could come to a conclusion that in spite of due diligence, the plaintiffs could not have raised these pleadings before commencement of the trial. In fact, most of the pleadings contained in the Schedule of the proposed amendment, pertain to the period prior to the institution of the suit or prior to the commencement of the trial.

Applying the ratio of the judgments referred to above, the application for amendment could clearly not have been allowed, as no jurisdictional facts were stated therein for the trial Court to come to the conclusion that the party could not have raised the matter prior to the commencement of the trial. Thus, the trial Court has clearly committed an error of law in ignoring the mandate of the proviso to Rule 17, and in exercising jurisdiction contrary to that provision.

19. In the impugned order, the trial Court at para 9 of its order, concludes that the evidence of the Plaintiff (PW.1) had commenced and has recorded that five applications for amendment of pleadings had been dismissed at various stages of the trial. It then records that the amendments sought to be incorporated by the application only clarify facts already pleaded in the original plaint, while some of the facts referred to events prior to the filing of the suit. The trial Court then reasons that by the application, the Plaintiffs have not sought to change the nature of the suit, and for these reasons allows the application. It then concludes that there is delay in filing the application, the delay is explained and the amendments are necessary.

The trial Court has, however, failed to apply the bar of the proviso to Rule 17 and further failed to address itself as to whether the jurisdictional facts required by the proviso were pleaded in the application, or whether such facts would enable the Court to conclude that in spite of due diligence, the Plaintiffs could not have raised the facts sought to be amended prior to

commencement of trial. The trial Court has, therefore, acted contrary to the provision of Order 6, Rule 17 CPC and has proceeded to allow the application for amendment beyond the powers vested in it by law. The impugned order dated 11/03/2020, therefore, calls for interference by this Court in its supervisory jurisdiction under Article 227 of the Constitution of India. The impugned order dated 11/03/2020 is quashed and set aside and the application for amendment of the plaint dated 06/02/2020 at Exhibit D-138 ought to have been dismissed.

20. The second application dated 02/08/2021 at Exhibit D-152 of the trial Court seeks to incorporate certain words in the existing prayer, making reference to “para 18 O” of the earlier amendment application dated 06/02/2020. Herein again, none of the paragraphs of the application contain any of the jurisdictional facts as required by the proviso to Rule 17, Order 6 CPC for the Court to conclude that in spite of due diligences the party could not have raised the matter before commencement of trial. All that the application claims is that on account of an inadvertent and typographical error, the party missed numbering the prayer in the earlier application dated 11/03/2020 and wished to incorporate the same in the pleadings.

This application was allowed vide the second impugned order dated 01/09/2021 purely on the basis that since the earlier application for amendment at Exhibit D-138 had been allowed, it would be just that the inadvertent mistake in the earlier application should be incorporated in the amendment. Since the

application dated 06/02/2020 at Exhibit D-138 has now been dismissed by this order, as a consequence, the second impugned order dated 01/09/2021 of the trial Court would also have to be dismissed. Consequently, the application at Exhibit D-152 of the file of the trial Court shall stand dismissed for the same reason that there were no jurisdictional facts pleaded by the Plaintiffs therein, that would enable the Court to proceed to exercise jurisdiction in terms of the proviso to Order 6, Rule 17 CPC. Both the questions formulated in paragraph 9 are answered in the negative and in favour of the Petitioners.

21. For the reasons stated above, both the impugned orders i.e. 11/03/2020 and 01/09/2021 are quashed and set aside. Consequently, amendment applications dated 06/02/2020 at Exhibit D-138 and amendment application dated 31/03/2021 at Exhibit D-152 of the record of the District Court in Civil Suit No.14/2016 are dismissed.

22. Since the proceedings before the District Court in this Suit had been stayed vide this Court's order dated 29/11/2021, the same shall now proceed with the trial. The parties shall appear before the Principal District Judge, North Goa in Civil Suit No.14/2016 on 16/08/2024 at 10.00 a.m. after which the District Court shall proceed with the trial of the suit. Rule is made absolute in terms of prayer clause (A) of both the Petitions and in the above terms. No order as to costs.

Civil Applications do not survive and stand disposed of.

VALMIKI MENEZES, J.