

**HIGH COURT OF TRIPURA  
AGARTALA**

**CRP No.93/2024**

Sri Samir Chakraborty, S/O.-Late Sunil Chakraborty, Village & P.O.-  
Durjoynagar, P.S.-N.C.C., Agartala, District-West Tripura.

..... Petitioner(s).

**V E R S U S**

Radiant Highrise Pvt. Ltd., A company incorporated under Indian Companies  
Act, 1956, having its registered office at 3A Auckland Place, 9<sup>th</sup> Floor, P.S.-  
Shakespeare Sarani, P.O.- Shakespeare Sarani, Kolkata - 700017, West Bengal.

Represented by Sri Pranab Kumar Ray, S/O.-Late Pramod Kumar Ray, resident  
of Madhyapara, Banamalipur, P.O.-Agartala, P.S.-East Agartala, District-West  
Tripura, Pin-799001.

(who has been authorized by the company under resolution dated 28-01-2021,  
wherein, said Pranab Kumar Ray has been authorized to file and conduct and  
represent the suit).

.....Respondent(s).

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For Petitioner(s) : Mr. Biswanath Majumder, Advocate.

For Respondent(s) : None.

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**HON'BLE THE CHIEF JUSTICE MR. APARESH KUMAR SINGH**

**Order**

**05/10/2024**

Heard Mr. Biswanath Majumder, learned counsel appearing for  
the petitioner.

2. Title Suit No.17 of 2021 was instituted by the respondent under  
Sections 14(3)(C), 34 and 37 of the Specific Relief Act, 1963 for enforcement  
of the development agreement and also declaration that the development  
agreement dated 21.06.2019 made between the plaintiff and the defendant are  
binding and enforceable. Petitioner also sought a declaration that plaintiff is  
entitled to construction of (G+4) storied RCC residential building over the land  
mentioned in the development agreement and for enforcement of the contract.  
The plaintiff also sought for perpetual injunction against the defendant. The  
suit was valued at Rs.1,05,000/- and court fees were paid thereupon.

Thereafter, written statements have been filed and issues were also framed vide order dated 09.01.2023. Plaintiff thereafter sought amendment of the plaint to incorporate certain additional reliefs under Order VI Rule 17 read with Section 151 of the Civil Procedure Code, 1908 (CPC, for short) sometime in May, 2023 as it appears that the copy of the amendment application was received by the other side on 19.05.2023.

3. The plaintiff sought the following additional relief/prayer to be added as para-VA at page-12 of the plaint:

*"VA) Pass a decree declaring that the Plaintiff is entitled to get Rs.27,33,929/- (Rupees Twenty Seven Lakhs Thirty Three Thousand Nine Hundred & Twenty Nine) only which was incurred by the Plaintiff as pre-construction activities and compensation amounting to Rs.10,00,000/- (Rupees Ten Lakhs) only in the event of cancellation of the Registered Joint Venture Agreement vide no.1-3755 dated 21.06.2019 recorded in the Book No.1, Vol. No.45, Page No.43-64 for the year 2019."*

4. Written objection was also filed by the defendant/petitioner herein as it appears that copy thereof was received by the plaintiff on 11.08.2023. The learned trial Court has by the impugned order dated 15.03.2024 allowed the proposed amendment to incorporate the alternative relief so that it may prevent multiplicity of suits. However, since the amendment was sought after framing of the issues at the stage of evidence, plaintiff was directed to compensate the defendant with a cost of Rs.3,000/- (rupees three thousand only). Thereafter, defendant/petitioner was also allowed to file additional written statement as per statement contained in the synopsis of the petition. After six months of the passing of the impugned order on 15.03.2024, the present revision petition under Article 227 of the Constitution of India has been filed on 25.09.2024 by the defendant being aggrieved by the order allowing amendment of the relief portion in favour of the plaintiff.

5. Learned counsel for the petitioner submits that the amendment has been proposed at a belated stage after framing of issues when evidence has begun. The amendment intends to set up a new relief which would change the very nature of the suit. He has also submitted that the prayer for injunction made before the learned trial Court was rejected. At no point of time earlier, the plaintiff thought it necessary to seek such amendment in the nature of an alternative relief. The respondent would be highly prejudiced if the amendment is allowed to sustain. Therefore, they have decided to assail it. Impugned order may be set aside.

6. I have considered the submission of learned counsel for the petitioner and taken note of the materials placed on record. I have also gone through the impugned order.

7. As noted above, the instant suit has been preferred in the year 2021 under the Specific Relief Act for enforcement of a development agreement dated 21.06.2019 made between the parties. It appears that plaintiff had not sought for any compensation for breach of the agreement in the original plaint. After framing of the issues, such a prayer in the nature of an alternative relief has been prayed for which is permissible in terms of Section 21 sub-section (5) of the Specific Relief Act, 1963. Section 21 of the Act reads as under:

**"21. Power to award compensation in certain cases.-**(1) In a suit for specific performance of a contract, the plaintiff may also claim compensation for its breach, [in addition to], such performance.

(2) If, in any such suit, the court decides that specific performance ought not to be granted, but that there is a contract between the parties which has been broken by the defendant, and that the plaintiff is entitled to compensation for that breach, it shall award him such compensation accordingly.

(3) If, in any such suit, the court decides that specific performance ought to be granted, but that it is not sufficient to satisfy the justice of the case, and that some compensation for breach of the contract should also be made to the plaintiff, it shall award him such compensation accordingly.

(4) In determining the amount of any compensation awarded under this section, the court shall be guided by the principles specified in Section 73 of the Indian Contract Act, 1872 (9 of 1872).

(5) No compensation shall be awarded under this section unless the plaintiff has claimed such compensation in his plaint:

Provided that where the plaintiff has not claimed any such compensation in the plaint, the court shall, at any stage of the proceeding, allow him to amend the plaint on such terms as may be just, for including a claim for such compensation.

*Explanation.*-The circumstance that the contract has become incapable of specific performance does not preclude the court from exercising the jurisdiction conferred by this section."

8. Proviso to Section 21(5) provides that where the plaintiff has not claimed any such compensation in the plaint, the court shall, at any stage of the proceeding, allow him to amend the plaint on such terms as may be just, for including a claim for such compensation. The explanation thereto provides that the circumstance that the contract has become incapable of specific performance does not preclude the court from exercising the jurisdiction conferred by this section.

9. In terms of Order VI Rule 17 of the CPC, the Court may at any stage of the proceedings allow either party to alter or amend his pleading 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.

10. The proceedings of the title suit are not at a fag end. Immediately after framing of the issues when the trial began, the plaintiff has sought for an

alternative relief by way of the proposed amendment filed on 19.05.2023. It is permissible for the plaintiff to seek alternative relief unless the reliefs sought for are self-destructive or inconsistent to each other. In a case for specific performance of contract, if the Court decides that the specific performance ought not to be granted, then the court may grant compensation for that breach. Section 21(5) provides that no compensation shall be awarded under this section unless the plaintiff has claimed such compensation in his plaint. In the wake of this legal position, the learned trial Court has upon consideration of the rival stand of the parties on the proposed amendment also taken into consideration the decision rendered by the Apex Court in the case of *Life Insurance Corporation of India vrs. Sanjeev Builders Private Limited* reported in *AIR 2022 SC 4256* which illustrates the conditions in which prayer for amendment can be allowed. It further indicates that delay in applying for amendment alone is not a ground to disallow the prayer. The amendment so allowed would not change the nature of the suit or the cause of action or set up an entirely new case, foreign to the case set up in the plaint.

In fact, if the amendment was not allowed, it may lead to multiplicity of suits. Therefore, the learned trial Court considered it proper to allow the proposed amendment, however, with a cost to compensate the prejudice caused to the defendant as the amendment was proposed at the evidence stage. Thereafter, the learned trial Court has also allowed the defendant to file additional written statement. If the defendant/petitioner has not filed additional written statement, as allowed by the learned trial Court, he may be allowed opportunity to file the same within a reasonable time. Moreover, petitioner has chosen to assail the impugned order six months thereafter when the trial has further proceeded.

11. In the wake of aforesaid circumstances and for the reasons recorded hereinabove, this Court does not consider it proper to exercise jurisdiction under Article 227 of the Constitution of India to interfere in the matter.

12. The instant revision petition is accordingly dismissed.

Pending application(s), if any, also stands disposed of.

(APARESH KUMAR SINGH), CJ

*Pulak*

**DIPESH DEB**

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