

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO.299 OF 2015**

MR. NABRAJ ANANT PRABHU & 4 ORS.PETITIONERS

V/S

THE GOA URBAN CO-OPERATIVE
BANK LTD. THR. GENERAL
MANAGER/SECRETARY

SHRI.VILAS M. NARKAR & 10 ORS.RESPONDENTS

Mrs. A. Agni, Senior Advocate with Mr. K. Govekar, Advocate for the
Petitioners.

Mr. R.G. Ramani, Advocate for Respondent No.1.

Mr. G. Vijaychandran, Advocate for Respondents No.2 to 6.

Ms. R. Kantak, Advocate for Respondent No.7.

CORAM : C.V. BHADANG, J.

DATE : 7th SEPTEMBER, 2015

ORAL ORDER :

By this petition, the petitioners are challenging the order dated 9/12/2014 passed by the Appellate Court in Regular Civil Appeal No.67/2006. By the impugned order the Appellate Court has allowed the application (Exhibit 33) filed by the first respondent/plaintiff for amendment of the plaint.

2. This is the second round of litigation between the parties. The first respondent had filed a suit for specific performance which was partly decreed by the Trial Court. In an appeal, the suit came to be

decreed in its entirety. That was challenged by the defendants including the present petitioners who are defendants no.9 to 15 in Second Appeals No.24,36 and 111/2010. This Court by a judgment and order dated 25/04/2014 had remanded the matter to the First Appellate Court. A perusal of para 10 of the judgment shows that on behalf of the first respondent-plaintiff, submission was made that the first respondent intends to seek an amendment of the plaint in terms of Section 21 of the Specific Relief Act for an alternate relief of damages. It appears that purportedly in pursuance of this the first respondent filed application (Exhibit 33) seeking certain amendments by introduction of paras 15(b) to 15 (e) in the plaint.

3. The petitioners did not file any reply to the application opposing the same although that application was opposed on behalf of the respondents no.2 to 6. The learned Appellate Court by the impugned order has allowed the application. Feeling aggrieved, the petitioners are before this court.

4. I have heard Mrs. A. Agni, learned Senior Counsel appearing for the petitioners, Mr. R.G. Ramani, learned Counsel appearing for respondent no.1, Mr. G. Vijaychandran, learned Counsel for respondents no.2 to 6 and Ms. R. Kantak, learned Counsel appearing for respondent

no.7.

5. Mrs. A. Agni, learned Senior Counsel appearing for the petitioners advanced two submissions whilst assailing the impugned order. It is submitted that the impugned order overlooks the liberty granted by this Court in the judgment and order dated 25/04/2014 in Second Appeals No.24, 36 & 111 of 2010. In other words, it is submitted that the amendment travels beyond the liberty granted by this Court. Secondly, it is submitted that the proposed amendment would not fall under Section 21 of the Specific Relief Act and, as such, the requirements of the proviso to Rule 17 of Order VI of Civil Procedure Code will come into play. It is submitted that the amendment is belated and in view of the proviso to Rule 17 Order 6 of the Civil Procedure Code the same could not have been allowed. Reliance is placed on the decision of the Apex Court in the case of *Jagdish Singh V/s. Natthu Singh* reported in *AIR 1992 SC 1604* and *Shiv Gopal Sah alias Shiv Gopal Sahu V/s. Sita Ram Saraugi & Ors.* reported in *(2007) 14 SCC 120*.

6. The learned Counsel appearing for the respondents no.2 to 6 and respondent no.7 support the petitioners.

7. On the contrary, Mr. R.G. Ramani, learned Counsel appearing for

the respondent no.1 has supported the impugned order. It is submitted that the amendment sought is pursuant to the liberty granted by this Court. It is submitted that in the Second Appeal it was submitted on behalf of the first respondent that they intend to file an application incorporating an alternate relief of damages. It is submitted that there is nothing on record to show that the relief for specific performance is abandoned. In that view of the matter, the amendment would clearly fall under Section 21 of the Specific Relief Act.

8. I have considered the rival circumstances and submissions made. A perusal of para 10 of the judgment of this Court in the Second Appeals No.24, 36 & 111 of 2010 would clearly show that it was submitted on behalf of the respondents that they intend to seek an amendment of the plaint in terms of Section 21 of the Specific Relief Act for an alternate relief of damages. In this context it would be worthwhile to see the proposed amendments by introduction of Paras 15(d), (e) and a portion in para 17 read thus:

15(d) The Plaintiff states that in breach of the Agreement dated 2/12/1982, the Defendant Nos.1 to 3 had transferred possession to the Defendant Nos.6,7 & 8 and 9 to 15 of the area that was agreed to be handed over to the Plaintiff and reserved for the Plaintiff in terms of the Agreement dated 2/12/1982. The Plaintiff, therefore, submits that it is the Defendant Nos.1 to 3 who have committed breach of the Agreement dated 2/12/1982 and the Defendant Nos.1 to 3 are therefore

liable to pay compensation for the said breach in terms of flaw. The Plaintiff states that as per the valuation carried out by the Plaintiff and the estimated market value of the premises agreed to be handed over to the Plaintiff by the Defendant Nos.1 to 3, the Plaintiff is entitled to a compensation of Rs.3,000/- per month from 2/12/1985 till the date of handing over possession of the total area of 84.56 square meters.

15(e) The Plaintiff submits that the Plaintiff is therefore entitled to a compensation of Rs.3,000/- per month from the date of expiry of three years from 2/12/1982 till the date of delivery of possession of the suit premises to the Plaintiff completed in all respect and as per the said "PLAN III" annexed to the Agreement dated 2/12/1982. The Plaintiff states that the said period of three years expired on 6/12/1985. The Plaintiff states that the Defendant Nos.1 to 3 have not delivered the possession of the suit premises to the Plaintiff and have in fact in breach of the Agreement dated 2/12/1982, transferred a part of the said premises agreed to be reserved for the Plaintiff to the Defendant Nos.6,7 & 8 and 9 to 15. The Plaintiff is therefore entitled to recover a sum of Rs.3,000/- per month by way of compensation from 7/12/1985 till the date the possession of the suit premises handed over to the Plaintiff completed in all respects as per the said "PLAN III" annexed to the Agreement dated 2/12/1982.

After Paragraph 17 of the Plaint, add: "the value of the Suit in view of the addition of compensation claimed at the rate of Rs.3,000/- per month from 7/12/1985 till date as the possession has not been handed over till date to the Plaintiff works out to Rs._____ and the maximum Court Fees of Rs.15,000/- is being paid herewith".

It can thus be seen that the proposed amendment is in the nature of an alternate relief of damages. There is nothing on record to suggest that the first respondent has relinquished or abandoned the relief of specific

performance.

9. It would be worthwhile to notice Section 21 of the Specific Relief Act, which 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, either in addition to, or in substitution of, 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.

Singh (supra) in para 10 of the judgment has held thus:

“....So far as the proviso to sub-sec.(5) is concerned, two positions must be kept clearly distinguished. If the amendment relates to the relief of compensation in lieu of or in addition to specific performance where the plaintiff has not abandoned his relief of specific performance the Court will allow the amendment at any stage of the proceeding. That is a claim for compensation falling under Section 21 of the Specific Relief Act, 1963 and the amendment is one under the proviso to sub-sec.(5). But different and less liberal standards apply if what is sought by the amendment is the conversion of a suit for specific performance into one for damages for breach of contract in which case S.73 of the Contract Act is invoked. This amendment is under the discipline of R.17, O.6, C.P.C. The fact that sub-sec.(4), in turn, invokes S.73 of the Contract Act for the principles of quantification and assessment of compensation does not obliterate this distinction.”

It is thus clear that in so far as the claims for compensation falling under Section 21 of the Specific Relief Act are concerned the amendment would be relatable to the proviso to sub-section (5) of Section 21 of the Specific Relief Act. The said proviso would indicate that the Court shall at any stage of the proceedings allow the plaintiff to amend the plaint to incorporate the claim for compensation on such conditions as may be just. The Hon'ble Apex Court has inter alia held that in so far as the amendments falling under Order 6 Rule 17 of Civil Procedure Code the same would be governed by different and less liberal standard than what would apply to the amendments seeking compensation under Section 21(5) of the Specific Relief Act. In view of

the fact that the first respondent has not abandoned the relief for specific performance and he is seeking damages by way of an alternate relief, the amendment would clearly fall under Section 21 of the Specific Relief Act. It also cannot be said that the amendment is beyond the liberty granted by this Court vide judgment and order dated 25/04/2014 in Second Appeals No.24, 36 and 111/2010.

10. The case of ***Shiv Gopal Sah alias Shiv Gopal Sahu V/s. Sita Ram Saraugi & Ors.*** (supra) does not arise out of an amendment which is relatable to Section 21 of the Specific Relief Act and thus cannot come to the aid of the petitioner.

11. I have perused the impugned order and it does not demonstrate exercise of jurisdiction with irregularity, much less material irregularity. In that view of the matter, no case for interference is made out.

12. At this stage, it is submitted on behalf of the petitioners that the first respondent has filed an application before the Appellate Court seeking remand of the matter to the Trial Court. It is submitted that the suit relates to the year 1985 and it would be just and proper that the First Appellate Court takes up the application for remand along with the final hearing of the appeal on merits. Mr. Ramani, learned Counsel for the

first respondent has no objection for such a course being followed.

13. I have considered the submissions. Apart from the concession on behalf of the first respondent, it is clear that the question whether the matter needs to be remanded can be appropriately dealt with and would require the matter to be heard on merits. Thus, possibly, the application seeking remand to the Trial Court cannot be decided without going into the merits of the appeal as a whole. In such circumstances, the Appellate Court shall take up the application for remand filed by the first respondent along with the final hearing of the appeal on merits. With this, the Writ Petition is dismissed with no order as to costs.

C.V. BHADNAG, J.

NH/-