

this Court. The Petitioner instituted an Appeal, which was allowed on 13/08/2007 and the suit was consequently restored.

4. On 27/06/2001, the Defendant No.1 alienated the suit property in favour of M/s. Ashray Enterprises, a partnership firm comprising Mr. Rashmin I. Shah as one of its partners. The Petitioner, in the year 2007, consequent upon the restoration of the suit, instituted a Contempt Petition, alleging breach of the interim order made on 17/10/2000. On or about 10/01/2007, this Contempt Petition was withdrawn.

5. The Petitioner then took out a Chamber Summons seeking impleadment of M/s. Ashray Enterprises and Mr. Rashmin I. Shah. Leave to carry out amendment was also applied for in the context of the conveyance dated 27/06/2001. For some technical reason, the Chamber Summons was withdrawn on 19/04/2011, with liberty to take out a fresh Chamber Summons to seek the same relief. In the year 2011, before fresh Chamber Summons could be taken out, on account of changes in position of pecuniary jurisdiction, the suit was made over to the City Civil Court.

6. In the City Civil Court, Affidavit-in-evidence on behalf of Petitioner-Plaintiff was filed on 27/08/2013.

7. On 02/09/2013, Mr. Rashmin I. Shah took out a Notice of Motion seeking his impleadment in the suit as Respondent No.2. It

was the case of said Mr. Rashmin I. Shah that any decision in the present suit will affect his interest derived under the Conveyance dated 27/06/2001. This Notice of Motion was allowed on 12/02/2014.

8. On 05/03/2014, the Petitioner took out a Chamber Summons seeking, *inter alia*, impleadment of M/s. Ashray Enterprises, the partnership firm of which Mr. Rashmin I. Shah is a partner, as also Mr. Rashmin I. Shah in his capacity as the partner. The Petitioner also applied for leave to amend the plaint, mainly for the purposes of bringing on record the events that have transpired during the pendency of the suit and ultimately, for a declaration that the Petitioner is not bound by the Conveyance dated 27/06/2001, which was executed during the pendency of the suit.

9. The newly impleaded Defendant No.2 i.e. Mr. Rashmin I. Shah, has filed Written Statement in the suit and in pursuance thereof, draft issues have been submitted on 30/01/2015. As noted earlier, the issues in the present suit had been cast prior to the Petitioner filing his Affidavit-in-evidence on 27/08/2013. However, on account of impleadment of Mr. Rashmin I. Shah and the Written Statement filed by him, there arose necessity to recast the issues.

10. The learned City Civil Judge has rejected his Chamber Summons mainly by relying upon the proviso to Order 6 Rule 17 of the CPC. The learned Judge has observed that the trial of the suit

commenced on 27/08/2013, on which date, the Petitioner his Affidavit-in-evidence. Thereafter, the matter was taken up on 17 dates during which the Petitioner did not make himself available for cross-examination. Further, since there is a lapse of almost 14 years since the institution of the suit, by relying upon proviso Order 6 Rule 17 of the CPC, the learned City Civil Judge has held that amendment to the plaint cannot be allowed.

11. Mrs. Anita Castellino, learned Counsel appearing for Respondent Nos.2 and 3, submitted that from the material on record, it is quite clear that the Petitioner was aware of the Conveyance dated 27/06/2001. On the basis of such Conveyance, The Petitioner had instituted Contempt Petition in the year 2007, which was subsequently withdrawn. The Chamber Summons for impleadment had been taken out in the year 2008 but was again withdrawn with liberty in the year 2011. The trial in the suit has already commenced and consequently there was no explanation for the delay involved in seeking amendment. Further, Mrs. Castellino submitted that any challenge to the Conveyance dated 27/06/2001 is by now, barred by the law of limitation. Mrs. Castellino further submitted that firm M/s. Ashray Enterprises and Mr. Rashmin I. Shah are clearly bonafide purchasers without notice of either any pending litigation or alleged prior agreement with the Petitioner. In these circumstances, Mrs. Castellino submitted that the learned City Civil Judge was entirely right in rejecting the Chamber Summons seeking amendment. Mrs. Castellino placed reliance upon the decision of thhe Hon'ble Apex Court in the

case of *Rameshkumar Agarwal vs. Rajmala Exports Pvt. Ltd. and Ors.*¹

12. Having perused the impugned order, as also the record, in my judgment, the impugned order dated 22/09/2014 is required to be set aside. The amendment, in the facts and circumstances of the present case to which reference is made hereinafter, is required to be allowed, subject, however, to payment of substantial costs by the Petitioner.

13. As noted earlier, the time lag between 27/01/2013 i.e. the date on which the Petitioner filed his Affidavit-in-evidence and the date on which the Chamber Summons was taken out for seeking leave to amend i.e. 05/03/2014, is sufficiently explained. The explanation is that no sooner the Affidavit-in-evidence was filed on 02/09/2013, Mr. Rashmin I. Shah took out a Notice of Motion seeking impleadment in the suit. This impleadment, incidentally, was applied for on the basis of Conveyance dated 27/06/2001 and the possibility of any decision in the present suit affecting the rights of Mr. Rashmin I. Shah derived on the basis of the Conveyance dated 27/06/2001. This Notice of Motion was allowed on 12/02/2014 and Mr. Rashmin I. Shah was directed to be impleaded as Defendant No.2 in the suit. Soon thereafter i.e. on 05/03/2014, the present Chamber Summons seeking leave to amend as well as impleadment came to be filed. The 17 dates to which the impugned order makes reference to, really

¹ 2012 (5) SCC 337

relate to the proceedings in the matter of impleadment of Mr. Rashmin I. Shah. Accordingly, that is clearly not a circumstance which could have been held against the Petitioner. Further, that is clearly not a circumstance which would establish that there was lack of diligence on the part of the Petitioner.

14. Although technically, the trial in the present case can be said to have commenced on 27/08/2013, the events subsequent thereto cannot be ignored. The material subsequent event after the said date is the impleadment of Mr. Rashmin I. Shah and the Written Statement filed by him. In pursuance of such Written Statement, which came to be filed on 24/11/2014, once again, the process of recasting of issues is on. In such circumstances, it cannot really be said that this was an amendment applied for, long after the trial in the suit has commenced. On account of subsequent events of the impleadment of Mr. Rashmin I. Shah, it is possibly necessary to recast the issues and the real trial will commence no sooner such issues are recast on the basis of defences urged by the Respondents.

15. In fact on 30/01/2015, the Petitioner applied for withdrawal of Affidavit-in-evidence filed on 27/08/2013, which application has been granted by the learned City Civil Judge. Thus, even as of date, it cannot be said that Affidavit-in-evidence is already filed and the trial in the suit has commenced.

16. On the aspect of bar of limitation, it is not necessary to make any observation at this stage. However, it needs to be noticed that the Conveyance, in respect of which some declaration is sought for in the proposed amendment, was executed during the pendency of this suit. Accordingly, the issue of limitation can always be kept open, however, this is not a case where leave to amend can be declined. Same is the position with regard to the contention of Mrs. Castellino that M/s. Ashray Enterprises and its partner Mr. Rashmin I. Shah were bonafide purchasers for value and without notice of either pending proceeding or alleged prior encumbrances. These are basically matters of defence, which, undoubtedly, the parties are entitled to raise in the matter.

17. If the proposed text of amendment is perused, then the same refers to mainly events which have taken place during the pendency of the suit. The Petitioner seeks to bring on record various orders that have been made during the pendency of the suit. The Petitioner also seeks some declaration with regard to the Conveyance dated 27/06/2001. Accordingly, if such amendment is permitted, the same will not change the nature of the suit. In fact, if such amendment is permitted, then the same would assist the Court in determining the real controversy between the parties and to make full and effective order, in case the Plaintiff makes out a case warranting the grant of the same. The proposed amendment will also assist in preventing multiplicity of proceedings.

18. So far as the overall delay in conducting of proceedings is concerned, no doubt, some prejudice is bound to occasion to the Respondents. The prejudice, however, is not of such nature as cannot be compensated by way of substantial costs. It is to be noted that Mr.Rashmin I. Shah sought for his impleadment in the suit only in the year 2013 and the same was granted in the year 2014. The proposed amendment only seeks to implead additionally the firm, in whose name the Conveyance dated 27/06/2001 has been executed and of which the said Mr.Rashmin I. Shah is a partner. Accordingly, although the Respondents have made out a case that substantial costs be granted in their favour, no case is made out for upholding the impugned order which declined leave to amend.

19. Insofar as the decision of ***Rameshkumar Agarwal*** (*supra*) is concerned, the said decision, in fact, assists the case of the Petitioner. In para 11 of the said Judgment, the Hon'ble Apex Court had held that ordinarily, the Court must not refuse bona fide, legitimate, honest and necessary amendments and should never permit mala fide and dishonest amendments. In the present case, the learned Civil Judge has not rejected the amendment on the basis that it was either malafide or dishonest. Further, the Hon'ble Apex Court has held that the Courts while deciding application seeking leave to amend, should not adopt a hyper-technical approach. Liberal approach should be the general rule particularly, in case where the other side could be compensated with costs. Further, the Hon'ble Apex Court has observed that normally, amendment is allowed to avoid multiplicity of litigations.

20. Taking into consideration all the facts and circumstances cumulatively, in my judgment, the impugned order dated 22/09/2014 is required to be set aside and is hereby set aside.

21. The Petitioner's Chamber Summons No.1249 of 2014 is made absolute subject to the Petitioner paying costs of Rs.50,000/- (Rupees Fifty Thousand Only) within a period of four weeks from today. Such costs may be paid to the Respondents directly or deposited before the City Civil Court within the aforesaid period.

22. The Petitioner to carry out amendment within two weeks from the date of deposit of costs and furnish amended copy to the Respondents.

23. Respondents will be thereafter entitled to file additional Written Statement/Written Statement as the case may be, raising therein all defences as may be permissible under the law, including the defence of limitation.

24. Rule is made absolute to the aforesaid extent.

25. There shall be no separate order as to costs in the present petition.

(M. S. SONAK, J.)