

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION (ST) NO. 798 OF 2015

Mumbai International Airport Pvt. Ltd. .. Petitioner

vs.

M/s. Krishna Developers Pvt. Ltd. .. Respondent

Mr. P.S. Dani, Sr. Advocate a/w. Ms Shoma Mitra, Ms Arpita Joshi i/b
M/s. Wadia Ghandy & Co. for the Petitioner.

Mr. Simil Purohit a/w. Mr. Sukesh Shah and Mr. S. Raikar i/b Shah
Legal for the Respondent.

CORAM : M. S. SONAK, J.

DATE : 6 JULY 2015.

P.C. :-

1] This petition is directed against the orders dated 5 December 2014 and 24 December 2014, in terms whereof the respondent (plaintiff) have been permitted to amend the plaint by seeking an amount of Rs.1,33,64,531.60 per month, instead of Rs.1,26,07,915.60 per month towards mesne profits.

2] Mr.Dani, learned senior advocate for the petitioner basically made the following two submissions in support of this petition:

(a) That issues have already been finalized on 1 October 2014 and the application seeking leave to amend was made only thereafter. Accordingly, the trial is deemed to have commenced and the respondent has failed to establish that despite due diligence such amendment could not

applied earlier;

(b) That a plaint was amended on the earlier occasion and mesne profits were claimed only for the period between 16 June 2009 and 15 June 2010. This means that the claim for mesne profits in respect of further period was waived. By the proposed amendment mesne profits are sought to be claimed for the period between 16 June 2009 and 16 December 2010. This is impermissible.

3] Having heard learned counsel for the parties and perused the record, there is no reason to interfere with the impugned orders. In this case, only issues have been framed, and the trial is yet to commence. Accordingly, the proviso to under Order 6 Rule 17 of the CPC is not attracted. That apart, from the amendment merely seeks to place on record that the possession of the suit premises was in fact delivered on 16 December 2010 and accordingly, mesne profits are claimed upto the said date in substitution of the earlier date of 15 June 2010. It is set out in the application seeking leave to amend that the claim for the period between 15 June 2010 and 16 December 2010 was not made, on account of inadvertence. There is no reason to disbelieve such a statement. This is not a case where

any claim could be set to have waived on the earlier occasion. Waiver or relinquishment has to be conscious. No waiver can arise from some inadvertent slip. In any case, the impugned orders have merely permitted amendment. The parties are yet to go to trial and establish their respective claims.

4] There is no jurisdictional error or arbitrariness involved in making of the impugned orders. Accordingly, this petition is dismissed. There shall, however, be no order as to costs.

(M. S. SONAK, J.)

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