

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 807 OF 2010

Jayram Govind Bhalerao .. Petitioner
VS.
Jaywant B.Deshmukh & Ors. .. Respondents

Mr. Vishal Kanade with Mr. J. Sachdev i/b. Ashoka Law Firm for
Petitioner.
Mr. Rajesh Datar for Respondent Nos. 1 to 8.
Mr. A. M. Kulkarni for Respondent No. 10.

WITH
WRIT PETITION NO. 1897 OF 2010

Jaywant Deshmukh & Ors. .. Petitioners
VS.
Jayram Govind Bhalerao & Anr. .. Respondents

Mr. Rajesh Datar for Petitioners.
Mr. Vishal Kanade for Respondent No. 1.

CORAM : M. S. SONAK, J.
DATE: 16 APRIL 2015

P.C. :-

1] These two writ petitions can be disposed of by a common order.

2] In writ petition no. 807 of 2010, the challenge is to the order dated 2 January 2010 made below Exhibits '113' and '120' in special civil suit no. 161 of 1995 to the extent it denies the petitioner leave

to amend the plaint raising claim in respect of the property allotted by CIDCO on 18 December 2007 under the 12.5 per cent scheme. The writ petition no. 1897 of 2010 has been instituted by some of the defendants in special civil suit no. 161 of 1995. The challenge in the said petition is also to the same order dated 2 January 2010, but to the extent the said order permits amendment to the plaint in respect of execution of Will dated 26 March 1996. In writ petition no. 1897 of 2010, there is also additional challenge to the order dated 11 January 2010, by which the learned Civil Judge extended the time limit to carry out amendment, in the matter of bringing heirs of the original deceased plaintiff on record.

3] The special civil suit no. 161 of 1995 was partly decreed by the learned Civil Judge, Panvel, by judgment and decree dated 30 June 2000. The petitioner in writ petition no. 807 of 2010 i.e. the original plaintiff or legal representative of the original plaintiff, instituted civil appeal no. 113 of 2000 before the District Judge, Raigad. In the said appeal, the petitioner took out a pursis dated 2 June 2008 urging the appeal court to take cognizance of the judgment and order dated 10 March 2008 made by this Court in appeal from order no. 399 of 2004 and further seeking leave to amend the original plaint in special civil suit no. 166 of 1995 with regard to execution of Will dated 26 March 1996. The pursis, also

urged that consequent upon grant of leave to amend the matter be remanded to the Civil Court, in the light of amendments as applied for.

4] The respondent nos. 1 to 8 in the said appeal before the District Court, through their counsel made the following endorsement upon the pursis dated 2 June 2008 :

"The respondent No. 1 to 8 have no objection to remand the matter with liberty to all parties to amend their respective pleading suitably and to lead additional evidence and necessary direction to trial Court to give fresh findings on all issues framed and to be framed in view of amendment in pleading."

5] The pursis was marked as Exhibit '53' and the same was disposed of by the appeal court by order dated 21 June 2008, the operative portion of which, reads thus :

"ORDER

- 1) *Exh. 53 is hereby allowed.*
- 2) *Special Civil Suit No. 161 of 1995 is hereby remanded to the Court of Civil Judge, Senior Division, Panvel, with the directions to give an opportunity to present Appellant and the Respondents to amend the pleading in respect of execution of Will only and thereafter to frame the issue about the proof of Will and to give an opportunity to both the sides to lead the evidence that effect and to dispose of suit according to law.*
- 3) *Both the parties to appear before the learned Civil*

Judge, S.D. Panvel, on 10.7.2008.

4) The learned lower Court to dispose of the suit within 18 weeks but on or before 24th October, 2008.

5) The learned lower Court is hereby directed not to give liberal adjournments to either parties and to follow these directions punctually.

6) Regular Civil Appeal No. 113/2000 stands disposed in terms of the above order. Decree of the trial Court is set aside.

7) No order as to costs.

8) Decree be drawn accordingly.

9) Superintendent, (Judl) District Judge Raigad to see that Record and Proceeding in the suit will reach in the trial Court within one week from the date of this order."

6] In pursuance of order dated 21 June 2008, the petitioner, applied for amendment of plaint by invoking the provisions of Order 6 Rule 17 of the CPC. Apart from pleadings concerning the Will dated 26 March 1996, the petitioner applied for leave to amend the plaint by way of seeking certain reliefs in respect of property allotted by CIDCO under the 12.5 per cent scheme.

7] The learned Civil Judge by the impugned order, has permitted amendment of the plaint, in so far as it concerns the Will dated 26 March 1996, but has declined leave to amend in so far as CIDCO allotted land is concerned, solely on the ground that the remand order dated 21 June 2008, had permitted amendment only in

respect of execution of Will dated 26 March 1996 and nothing further.

8] Upon hearing the learned counsels for the parties and perusing the record, in my judgment, the impugned order, in so far as it declines the petitioner leave to amend in respect of the CIDCO allotted property is concerned, is required to be set aside. This is because, CIDCO made allotment order on 18 December 2007 i.e. after the judgment and decree was made on 30 June 2000 in special civil suit No. 161 of 1995 and at the stage when an appeal against the same i.e. civil appeal No. 113 of 2000 was pending before the appeal court. In that sense, the allotment of property by CIDCO is a subsequent event. Further, relief in this regard, had already been sought by the plaintiff in the suit as originally instituted. However, whilst making the said judgment and decree dated 30 June 2000, such relief was not granted, because CIDCO was yet to make any allotment under the 12.5 per cent scheme. Specific liberty however was granted to the plaintiff to move the court at the appropriate stage once such allotment is made by CIDCO. In this regard, reference is required to be made to the extract from the judgment and decree dated 30 June 2000, which reads thus :

“.....Plaintiff's suit is pre-mature in respect of the allotment of 12.5% plot to be given by CIDCO to the affected persons. The plaintiff could not produce any conclusive evidence, nor

she was produced any documentary or oral evidence that really CIDCO is going to allot 12.5% plot to the project affected persons i.e. the defendants 1 to 8. The plaintiff is at liberty to move the Court at proper time in respect of the same. However, she is not entitled at this stage to claim any share in the said property."

9] Mr. Datar, the learned counsel for the respondent nos. 1 to 8 in writ petition no. 807 of 2010 and for the petitioner in writ petition no. 1897 of 2010 however submitted that the allotment by CIDCO dated 18 December 2007 i.e. much prior to the pursis dated 2 June 2008, by which the petitioners applied for leave to amend only with regard to the Will dated 26 March 1996. In this view of the matter, there is no question of the petitioners, at this belated stage seeking leave to amend the plaint in regard to the property allotted by CIDCO. Such relief was rightly declined by the learned Civil Judge and there is no arbitrariness involved in the exercise of discretion.

10] Although it is true that the CIDCO allotment is dated 18 December 2007, that by itself is no ground for refusal of leave to amend the plaint. The CIDCO's allotment is undoubtedly an event subsequent, even to the making of the decree dated 30 June 2000 in the suit. The suit was deemed to be pending in the appeal court, because appeal is nothing but the continuation of the original suit. In the judgment and decree dated 30 June 2000, specific liberty was

granted to the petitioners to move the court at the proper stage. This would mean after allotment is made by CIDCO under the 12.5 per cent scheme. At the highest, it would be said that there is some delay on the part of the petitioners. However, the delay is not of such nature as would result in leave being declined to amend the plaint. The prejudice, if any, to the respondents, can always be compensated by way of some costs.

11] The petitioners in writ petition no. 1897 of 2010 are not entitled to any substantive reliefs. This is because, the petitioners, in response to pursis dated 2 June 2008 had not really objected for grant of leave to amend in the context of Will dated 26 March 1996. Further, the petitioners did not even challenge the order dated 21 June 2008 made by the appeal court, in which leave was granted by the appeal court itself to amend the plaint in the context of Will dated 26 March 1996. The order dated 11 January 2010 merely extends period by three weeks for carrying out amendment, which had already been permitted. There is absolutely no error or arbitrary exercise of discretion involved.

12] Mr. Datar, the learned counsel for the petitioners in writ petition no. 1897 of 2010, also submitted that the amendment application of the petitioners ought not to have been considered,

because formal amendment to the appeal memo, in pursuance of liberty granted by this Court in its order dated 10 March 2008 had not been carried out. This is only a hyper technical objection. The amendment, was ultimately carried out though after some delay.

13] It is however made clear that in pursuance of amendments being carried out by the petitioner in writ petition no. 807 of 2010 to the plaint, the respondents i.e. the defendants in a suit shall be entitled to carry out consequential amendments to their written statements or to file additional written statements, within a period of six weeks from the date the amended copy of the plaint is served upon them. For this purpose, it shall not be necessary for the defendants to seek any further relief from the learned Civil Judge.

14] This Court, by interim order dated 11 October 2011 in these petitions, had recorded that CIDCO has already made allotments of land and had restrained the respondents in writ petition no. 807 of 2010 from creating any third party rights or parting with possession, if possession has already been granted to them. Mr. Datar, the learned counsel for the respondent nos.1 to 8 in writ petition no. 807 of 2010, on basis of instructions, states that though allotment has been made, possession has not as yet been handed over to the respondents. In view of the same, there is no necessity of

continuing the interim relief. As and when, any occasion arises, needless to add that the petitioners in writ petition no. 807 of 2010 shall have the liberty to apply to the learned Civil Judge in the pending suit for appropriate interim reliefs. Such application if made shall be considered by the learned Civil Judge on its own merits and uninfluenced by the circumstance that such relief had been granted during the pendency of the present proceedings.

15] It is further clarified that this Court has not gone into the merits of the matter and consequently all contentions of all parties *inter alia* with regard to framing of issues are kept open for decision by the learned Civil Judge.

16] In the result, Rule is made absolute in terms of prayer clauses (a) and (b) in writ petition no. 807 of 2010, with the rider that the petitioner in said petition shall pay costs of Rs.7,500/- to the respondents within a period of four weeks from today. Costs may be deposited in the trial Court. Rule is however discharged in writ petition no. 1897 of 2010.

(M. S. SONAK, J.)