

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.6085 OF 2014

Smt. Santana Philips Joseph]
Age 54 years, Occ : Business]
R/o. B-001, New Shreenath Complex]
CHS Ltd. Near Bharat Petrol Pump]
Bhayander Road, Mira Road (East)]..... Petitioner
Taluka & District Thane] (Orig. Plaintiff)

versus

1] The Commissioner,]
Mira Bhayander Municipal]
Corporation, Taluka & District]
Thane]
]]
2] The Secretary]
New Shreenath Complex]
CHS Ltd. Near Bharat Petrol Pump]
Bhayander Road, Mira Road (East)]
Taluka & District Thane]
]]
3] The Chairman]
New Shreenath Complex]
CHS Ltd. Near Bharat Petrol Pump]
Bhayander Road, Mira Road (East)]
Taluka & District Thane]
]]
4] New Shreenath Complex]
CHS Ltd. Near Bharat Petrol Pump]
Bhayander Road, Mira Road (East)]..... Respondents
Taluka & District Thane] (Orig. Defendants)

Mr. I M Khairdi for the Petitioner.
Mr. Ravindra Pethe i/by Mr. M S Lagu for the Respondent No.1.
Mr. C P Deogirikar for the Respondent Nos.2, 3 and 4.

CORAM : R. M. SAVANT, J.
DATE : 02nd February 2015

ORAL JUDGMENT

1 Rule, with the consent of the learned counsel for the parties made returnable forthwith and heard.

2 The writ jurisdiction of this Court is invoked against the order dated 13/02/2014 passed by the learned 6th Joint Civil Judge, Senior Division, Thane by which order the Application being Misc. Application No.23 of 2013 for correction of the cause title, in so far as the Defendant Nos.2 to 4 in the Judgment and Decree passed in Regular Civil Suit No.666 of 2007 are concerned, came to be rejected.

3 It is not necessary to burden this Order with unnecessary details. Suffice it to state that the Petitioner herein was the original Plaintiff who had filed Regular Civil Suit No.666 of 2007 against the Respondents herein who were the Defendants in the said suit. The suit in question is in respect of the premises wherein the Plaintiff is carrying out her hotel business namely Shop No.6 which is one of the shops situated in the building of the Respondent No.4 - Society. The Plaintiff also resides in the said Society. Hence in the cause title in so far as the Plaintiff is concerned, the address was shown as Flat No.B-001, New Shrinath Complex CHS Ltd. The Plaintiff had arrayed the office bearers of the Society as also the Society as party Defendants to the suit in question, they

are the Defendant Nos.2 to 4. However, in so far as the said Defendant Nos.2 to 4 are concerned, the name of the Society in the address mentioned was New Sidharth Complex CHS Ltd. The said Defendant Nos.2 to 4 came to be served by a writ of summons and a written statement came to be filed on their behalf on 25/3/2008 in the suit in question, and the said written statement was filed by the Secretary of the New Shreenath Complex CHS Ltd. Hence it was so typed in the written statement below Paragraph 14 and thereafter on the last page the signature of the Chairman of the Society as also the signature of one of the office bearers of the Society is also appearing. They have signed as the office bearers of the New Shreenath Complex CHS, Ltd which has been typed below their signatures. To the said written statement is also affixed the stamp of the Society at three places and the stamp is of the New Shreenath Complex Co-op. Hsg. Society. Hence though the name of the Society was wrongly mentioned as New Sidharth CHS Ltd in the cause title, however, the office bearers of the Society had proceeded on the basis that it is they who have been arrayed as the Defendant Nos.2 to 4 to the suit in question and accordingly have prosecuted the suit. The said suit came to be decreed by the Trial Court by the Judgment and Order dated 7/5/2013 and the Defendants were enjoined from interfering with the Plaintiff's carrying out the said hotel business in the premises in question.

4 After the said decree, the Plaintiff found that she had wrongly

impleaded the Defendant Nos.2 to 4 as the office bearers of New Sidharth Complex CHS Ltd instead of New Shreenath Complex CHS Ltd. The Plaintiff therefore filed the instant Application being Misc. Application No.23 of 2013 for correction of the cause title of the suit in question in the judgment as well as the decree passed in the suit.

5 The Trial Court has rejected the said Application inter alia on the ground that the suit in question being of the year 2007, the Application seeking amendment of the cause title has been filed after a period of 6 years for which no explanation has been given by the Plaintiff. The Trial Court has further observed that the correction sought would not be covered by the clerical or arithmetical mistakes in the Judgment, decree or order, or errors arising therein from any accidental slip or omission which can be corrected under Section 152 of the Code of Civil Procedure. The Trial Court as indicated above has accordingly rejected the said Application by the impugned order dated 13/02/2014.

6 Heard the learned counsel for the parties. The learned counsel appearing for the Petitioner – original Plaintiff would reiterate the case of the Plaintiff before the Trial Court seeking correction of the judgment as well as the decree passed in the said Regular Civil Suit No.666 of 2007.

7 Per contra, the learned counsel appearing on behalf of the Respondents which includes the Society would oppose the above Petition and would contend that having regard to the nature of the relief sought, the same can only be referable to Order VI Rule 17 of the Code of Civil Procedure and cannot be done by having recourse to Section 152 of the Code of Civil Procedure.

8 Having heard the learned counsel for the parties, I have considered the rival contentions of the parties. As indicated herein above, in the cause title the Plaintiff has given her address as New Shrinath Complex CHS Ltd. where she is residing as also carrying out her hotel business in Shop No.6 which is one of the shops situated in the building of the Society. However, in the cause title of the suit in question being Regular Civil Suit No.666 of 2007 in so far as the Defendant Nos.2 to 4 are concerned, in the addresses the name of the Society has been wrongly mentioned as New Sidharth Complex CHS Ltd instead of New Shreenath Complex CHS Ltd. It is required to be noted that the Defendants were served with the suit summons, though in the addresses the name of the Society was mentioned as New Sidharth Complex CHS Ltd. in the cause title. The Defendant Nos.2 to 4 accepted the suit summons and also filed their written statement. The said fact relating to the acceptance the suit summons has been adverted to herein above. The Defendant Nos.2 to 4 have thereafter participated in the

proceedings on the basis that it is the New Shreenath Complex CHS Ltd which has been sued in the suit in question. As indicated above, the suit in question came to be decreed on 7/5/2013 and thereafter the instant Application came to be filed. The Trial Court has rejected the said Application for the reasons which have been mentioned in the earlier part of this Order.

9 In my view, the Trial Court has taken a hyper technical view of the matter by rejecting the Application on the ground that the same has been filed after a period of 6 years and secondly on the ground that such a correction is not permissible under Section 152 of the Code of Civil Procedure. It is also required to be borne in mind that there is a valid decree passed by a Competent Court in favour of the Petitioner – original Plaintiff, and merely because there is an error in the addresses of the Defendant Nos. 2 to 4 in respect of which admittedly no objection was taken by the Defendant Nos.2 to 4, the decree cannot be put in jeopardy on the said basis. The Trial Court ought to have appreciated that even if the Judgment and order as also the Decree is corrected, no prejudice would be caused to the Defendants as the Defendant Nos.2 to 4 have also participated in the proceedings on the basis that it is they who have been sued and not some other party. The provisions of the Code of Civil Procedure as has been held times out of number are to be used for furthering the cause of substantial justice, rather than to oppress it. In my view, the impugned order is therefore required to be quashed and set

aside and is accordingly quashed and set aside. The Application in question being Misc. Application No.23 of 2013 would accordingly stand allowed, and the Petitioner herein i.e. the Original Plaintiff would be entitled to correct the cause title of the suit in question being Regular Civil Suit No.666 of 2007 so as to substitute New Sidharth Complex CHS Ltd by New Shreenath Complex CHS Ltd wherever it appears in the cause title. Amendment to be carried out within a period of three weeks from date. The above Petition is allowed to the aforesaid extent. Rule is accordingly made absolute with parties to bear their respective costs of the Petition.

[R.M.SAVANT, J]