

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.8625 OF 2015

Dewanchand Ramsaran Industries and others .. Petitioners

Versus

Kantilal Ukaji and others .. Respondents

**Shri. A. A. Kumbhakoni, Senior Advocate a/w Shri. Vachan Bodke i/by
M/s. Chitnis Vaithy & Co., for the Petitioners.**

**Shri. Aditya Thakkar a/w Shri. Deepak Shukla i/by Vinod Mistry &
Co., for the Respondents.**

CORAM : R.M. SAVANT, J.

DATE : 28th AUGUST, 2015

PC.

1. The Writ Jurisdiction of this Court is invoked against the order dated 29.04.2015 passed by the Learned Judge of the City Civil Court, Bombay, by which order the Chamber Summons filed by the original Plaintiffs i.e. the Respondent Nos.1 to 10 herein came to be allowed and the original Plaintiffs were permitted to carry out amendment to the plaint in terms of the amendment claimed as per the schedule to the Chamber Summons.

2. The suit as originally filed was claiming a right of way through the property of the Defendants by a road which according to the Plaintiffs was in existence. The suit was originally filed in this Court and

the Plaintiffs had filed an application for interim injunction being Notice of Motion No.2472 of 2000 which came to be dismissed against which an Appeal was filed. The Appeal also came to be dismissed. In the context of the present Petition, it is required to be noted that it has been averred in the plaint that the right of way which the Plaintiffs claim is part of the proposed DP road. During the pendency of the suit, the part of the land of the Plaintiffs and the part of the land of the Defendants was acquired for the project known as the "Eastern Freeway" which starts from South Mumbai and ends at Chembur. The extent of the land acquired from the Plaintiffs and the Defendants and the consequences of the said acquisition are part of the averments which are sought to be incorporated now in the plaint. What is required to be noted that in so far as the Plaintiff is concerned, it seems that his property was divided into two parts, Southern and Northern portion on account of the "Eastern Freeway" being constructed. Hence, apart from the averments relating to the acquisition of the land how the properties have been subdivided on account of the said acquisition, as also on account of construction, is sought to be incorporated in the plaint. The Plaintiffs sought amendment of the plaint as it their case that there are Service Roads on either side running alongside the free way which have been blocked by the Defendants by putting up GI Sheets and therefore, the access of the Plaintiffs has been

obstructed. The Plaintiffs have accordingly sought consequential prayers based on the case which is now sought to be incorporated in the plaint. The said prayer clauses are (b-1), (b-2), (b-3) and (b-4). The sum and substance of the prayers is that the Defendants be directed to remove their obstruction put up by way of GI Sheets.

3. The Chamber Summons filed by the Plaintiffs was replied to on behalf of the Defendants and the opposition was principally on the ground that in view of the construction of the said “Eastern Freeway” the cause of action for filing the suit no more survives and if the plaint is allowed to be amended, then the nature of the suit would change.

4. The Trial Court considered the said Chamber Summons and has by the impugned order allowed the same. The gist of the reasoning of the Trial Court was that the suit as originally filed is for claiming a right of way and by the amendment, what is sought is now change in the relief which still according to the Trial Court revolves around the right of way of the Plaintiffs. The Trial Court therefore observed that since the events which are now sought to be incorporated have taken place during the pendency of the suit they are necessary to be incorporated in the suit and that the same would not change the nature of the suit. The Trial Court further observed that the relief which the Plaintiffs want to claim by way of amendment cannot be said to be based on a separate cause of action

and barred by limitation because the suit is pending and accordingly, deemed it appropriate to allow the Chamber Summons.

5. The Learned Senior Counsel appearing on behalf of the Petitioners Shri. A. A. Kumbhakoni sought to reiterate the case of the Petitioners/original Defendants which was urged before the Trial Court whilst opposing the Chamber Summons, and the principal contention of the Learned Senior Counsel is that by allowing the amendment, the nature of the suit has completely changed. The Learned Senior Counsel also sought to urge contentions as regards the merits of the case of the Plaintiffs as sought to be incorporated in the plaint by way of the amendments.

6. Per contra, the Learned Counsel appearing for the Respondent Nos.1 to 10 i.e. the original Plaintiffs Shri. Aditya Thakkar sought to justify the impugned order. The Learned Counsel would contend that the suit still continues as a suit claiming a right of way. However, the factual foundation has changed in view of the events which have transpired pending the suit. The Learned Counsel also pointed out that the impugned order has also worked out in the sense that pursuant to the impugned order which was passed on 29.04.2015. The amendments were carried out on 07.05.2015 in the plaint and the amended plaint was served on the Defendants on 08.05.2015 and thereafter compliance has been reported to

the Trial Court on 09.05.2015. The Defendants were granted time to file their Additional Written Statement by 23.06.2015. Since the Additional Written Statement was not filed, though time was granted for the same, a no Additional Written Statement order came to be passed on 16.07.2015. It is further pointed out by the Learned Counsel that the affidavit of evidence has been filed by the plaintiffs and on the basis of the affidavit of evidence, Plaintiffs were directed to file their additional documents, which they have filed and now the suit is kept for admission and denial of the documents.

7. Having heard the Learned Counsel for the parties. In my view, no fault can be found with the impugned order passed by the Trial Court. As indicated above, the amendment sought is as a consequence of the events which have taken place during the pendency of the suit. It is required to be noted that the suit as originally filed was claiming a right of way and the cause for moving the amendment is the obstruction created by the Defendants to the Plaintiffs from accessing the Service Road from the Northern and Southern portions of their property on account of putting up of GI Sheets on the boundary by the Defendants. Having regard to the well settled dictum that the amendment which results in complete and effectual adjudication of the dispute is required to be allowed, as also on the ground that the multiplicity of proceedings is to be avoided, the

impugned order allowing the amendment can be sustained.

8. It is also required to be borne in mind that the impugned order has already been given effect to in the sense that the plaint has already been amended on 07.05.2015 which has also been served on the Defendants and ultimately a no Additional Written Statement order came to be passed against the Defendants on 16.07.2015 and the matter is now post the amendment is kept for marking of the documents. In my view, therefore, no case for interference in the Writ Jurisdiction of this Court is made out. The Writ Petition is accordingly dismissed.

9. In view of the dismissal of the Writ Petition, the Civil Application does not survive and to accordingly stand disposed of as such.

[R.M. SAVANT, J]