

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

WRIT PETITION NO.1321 OF 2014

Shri. Sanjaykumar Badrinath Pardeshi

.. Petitioner

Versus

Shri. Baliram Hari Jadhav and another

.. Respondents

Mr. M. M. Sathaye, for the Petitioner.

Mr. Niranjan P Shimpi, for the Respondent No.1.

CORAM : R.M. SAVANT, J.

DATE : 17th FEBRUARY, 2015

PC.

1. The Writ Jurisdiction of this Court is invoked against the order dated 24.10.2013 passed by the Learned 7th Joint Civil Judge, Junior Division, Malegaon, by which order the application Exh.38 for amendment of the plaint came to be allowed and resultantly the plaint allowed to be amended in terms of the amendment sought vide said the application Exh.38.

2. The suit in question being Regular Civil Suit No.273 of 2012 has been filed by the Respondent No.1 for simplicitor injunction for restraining the Petitioner herein i.e. the Defendant from dealing with the suit property. The suit is founded on the alleged agreement for sale dated

22.09.2010 allegedly executed by the Defendant No.1 in favour of the Plaintiff in respect of the land admeasuring 1 hector 29 Ares in Gat No.448/1, Mouje Saine (B), Tal-Malegaon, Dist-Nashik. The Plaintiff has alluded to the antecedent facts leading to the execution of the Sale Deed dated 22.09.2010, in respect of the alleged consideration fixed for the said transaction and has also alluded to the fact that he has paid an amount of Rs.1,00,000/- to the Defendants. However, though the foundation was laid in the suit in terms of the agreement to sale allegedly executed by the Defendants, the Plaintiff had not sought the specific performance of the agreement. The Defendants filed their written statement and have denied the execution of any such agreement in favour of the Plaintiff. It seems that issues thereafter were framed in the suit and it is at the said stage that the instant application Exh.38 came to be moved by the Plaintiff for amendment of the plaint so as to incorporate averments relating to specific performance and also to incorporate a prayer seeking specific performance of the said agreement dated 22.09.2010. The said amendment application Exh.38 was opposed to on behalf of the Defendant No.1. The Defendant No.1 raised contentions as regards entitlement of the Plaintiff to amend the plaint having regard to under Order 2 Rule 2, on the ground that there is no due diligence and that the nature of the suit would change, if the amendment is allowed. The Trial Court considered

the said application Exh.38 and after rejecting the objections to the said amendment sought on the grounds which have been stated herein before allowed the said application by holding that the said amendment was necessary for a complete adjudication of the dispute between the parties. The Trial Court whilst allowing the said application has also adverted to the fact that the foundation has already been laid in the plaint in the matter of the execution of the said agreement dated 22.09.2010 by the Defendants in favour of the Plaintiff. The Trial Court therefore observed that the same would not change the nature of the suit. As indicated above, it is the said order dated 24.10.2013 allowing the application Exh.38 which is taken exception to by way of the above Petition.

3. The Learned Counsel appearing for the Petitioner i.e. the original Defendant No.1 would reiterate the case of the Defendants before the Trial Court and would contend that allowing the amendment would result in the change in the nature of the suit that the amendment has been allowed without the Trial Court satisfying itself whether the due diligence test has been satisfied by the Plaintiff. The Learned Counsel sought to place reliance on the judgment of a Learned Single Judge of this Court reported in **2015(1) Mh.L.J. 197** in the matter of **Ashok Teofilo Vaz and others Vs. State of Goa and others**. In support of his contention that since the issues were framed, the trial has commenced and therefore, an

application for amendment could not be entertained. The Learned Counsel also sought to place reliance on the judgment of the Apex Court in **(2013) 9 SCC 485** in the matter of **Mashyak Grihnirman Sahakari Sanstha Maryadit Vs. Usman Habib Dhuka and others**. In my view there is no merit in the above Petition. As indicated above, the foundation has already been laid in the suit, where as indicated herein above, the Plaintiff has alluded to the antecedent facts leading to the execution of the agreement dated 22.09.2010. The cause of action for filing the amendment application as the Plaintiff has stated is the denial of the execution of the said agreement by the Defendants in the written statement which has prompted the Plaintiff to move an application for amendment. The Trial Court having regard to the aforesaid facts has therefore come to a conclusion that the nature of the suit would not change and has also observed that the same would result in the complete and effectual adjudication of the dispute between the parties. It is trite that an amendment which results in giving a quietus to lis between the parties is required to be allowed as the underlined principle is that same avoids multiplicity of the litigation. In so far as the judgments cited by the Learned Counsel for the Petitioner are concerned, in so far as the judgment in Ashok Teofilo Vaz's case (*Supra*) is concerned, the said judgment runs counter to the judgment of the Division Bench of this

Court, wherein the Division Bench has held that trial is said to have commenced when the affidavit of evidence is filed. In so far as the judgment of the Apex Court on which the Trial Court has relied upon is concerned, in the said case the Apex Court was concerned with a criminal trial it is in the said context that the Apex Court has held that the trial commences when the issues are framed. In so far as the judgment of the Apex Court in Mashyak Grihanirman Sahakari Sanstha Maryadit's case (*Supra*) is concerned, it is in the facts of the case before it that the Apex Court held that the amendment sought by way of an application is after thought. In the instant case the foundation has already been laid in the suit, however the prayer remained to be incorporated. The judgment of the Apex Court would therefore have no application. In that view of the matter, no case for interference in the Writ Jurisdiction of this Court is made out. However, it would be open for the Petitioner herein i.e. Defendants to file their additional written statement to the amended plaint within eight weeks from date. Needless to say that the observations made in the instant order are only for considering the application for amendment in the plaint. The contentions of the parties on merits are kept open for being urged before the Trial Court.

[R.M. SAVANT, J]