

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 46 OF 2015**

Ramesh Harakchand Arora & Anr.

..Petitioners

Vs.

Pratik Industrial Estate Co-operative Society Ltd & Anr.

..Respondents

Mr. S. K. Shinde with Mr. Omkar Nagwekar for the Petitioners

Mr. J. S. Kini i/b Mr. Suresh Dubey for the Respondent No.1

CORAM : R. M. SAVANT, J.

DATE : 9th JANUARY, 2015

P.C.

1 The Writ Jurisdiction of this Court is invoked against the order dated 16-12-2014 passed by the Learned Judge of the City Civil Court, Mumbai, by which order, the application for amendment of the plaint being Chamber Summons No.2621 of 2013 filed by the Respondent No.1 i.e. original Plaintiff came to be allowed and resultantly the Respondent No.1 was permitted to amend the plaint in terms of the schedule to the affidavit in support of the Chamber Summons.

2 The Respondent No.1 is an Industrial Co-operative Society comprised of Unit purchasers in the building which was constructed by the Respondent Nos.3 herein. The Petitioners herein are also the purchasers of certain premises from the Respondent No.3. In the context of the challenge to

the impugned order, it would be apposite to refer to the prayers which were prayed for in the Suit as originally filed. The said substantive prayers are prayer clauses (a) and (b). The said prayer clauses have been preceded by the clause regarding the cause of action which is clause (18) wherein it has been averred by the Plaintiff that cause of action arises when the Defendant Nos.1 and 2 i.e. the Petitioners herein started putting up metal barrier to prevent members from bringing the cars inside the suit property. In clause (22) it has been averred that the Suit is for enforcement of statutory obligation against the Defendants under the Maharashtra Flat Ownership Act, 1983 (MOFA) and therefore the Plaintiff is to pay Court fees in terms of Section 6(iv) (j) of Bombay Court Fees Act.

3 A reading of the aforesaid prayer clause therefore discloses that the Plaintiff is claiming right over the entire ground including stilt terrace and all common areas of the Suit property situated wherein the building of the Plaintiff society is located. The said relief sought is therefore the usual relief sought in a Suit filed for enforcing the obligations under MOFA. By prayer clause (b) the Plaintiff has sought an injunction from restraining the Defendants from preventing, obstructing the Plaintiff and its members in bringing and parking their cars/vehicles in the ground and stilt area of the structure.

4 The Plaintiff had moved an application for interim injunction in terms of the injunction sought vide clause (b) of the Suit as originally filed. The Learned Judge of the City Civil Court, Bombay by his order dated 15-3-2013 granted injunction in favour of the Plaintiff society. The said order dated 15-3-2013 was challenged by way of an Appeal from Order being No.309 of 2013 in this Court. A Learned Single Judge of this Court admitted the said A. O. and granted stay to the order dated 15-3-2013. The said order dated 9-4-2013 passed by the Learned Single Judge of this Court was challenged by way of an SLP by the Plaintiff being SLP Civil No.22189-22190 of 2013. The said SLP came to be dismissed by the Apex Court by order dated 29-7-2013. However, the Apex Court requested this Court to decide the A. O. No.309 of 2013 expeditiously. The said A. O. thereafter came up for hearing before a Learned Single Judge of this Court when a statement came to be made on behalf of the Plaintiff that in view of the instant Chamber Summons No.2621 of 2013 being filed for amendment of the plaint, the Plaintiff would withdraw the Notice of Motion which was filed for injunction and would renew the application for interim reliefs if the amendment sought vide the instant Chamber Summons was to be allowed by the Trial Court. The Learned Single Judge of this Court permitted the said course of action to be followed and accordingly disposed of the A.O. On 29-4-2014. It is thereafter that the instant Chamber Summons has been taken up for consideration by the Trial Court.

5 By the instant Chamber Summons which has been filed for amendment of the plaint the Plaintiff has sought incorporation of paragraph Nos.12(a) to 12(q) and has also sought incorporation of prayer clauses (a)(1) to (a)(8). Suffice it to say that a reading of the averments as well as the said prayer clauses discloses that by incorporation of the averments specific details are sought to be given and in so far as prayer clauses are concerned, they can be said to be consequential to the averments which are sought to be incorporated. The said Chamber Summons was opposed to on behalf of the Petitioners inter alia on the ground that the relief sought by way of the prayer clauses which are now sought to be incorporated are barred by limitation, that the nature of the Suit would change if the amendments are allowed and that the Plaintiff would be required to pay the court fees on the basis of the reliefs which have been sought. The Trial Court as indicated above considered the instant Chamber Summons and has allowed the same by the impugned order dated 16-12-2014 in the said process the Trial Court has rejected the objections raised on behalf of the Defendant Nos.1 and 2.

6 The gist of the reasoning of the Trial Court is that the relief which are sought, are within the ambit of the provisions of MOFA namely declaration that the Plaintiff has right over the entire ground including stilt terrace etc., and the relief of perpetual injunction restraining the Defendants from using the common space etc, as also the relief in respect of the undertaking declaration

dated 7-6-1999 and agreement dated 16-10-2004 which documents are challenged on the basis as the same are contrary to MOFA. The Trial Court further observed that the Suit being under MOFA the amendments sought are necessary for a complete and effectual adjudication of the Suit and for avoiding the multiplicity of the proceedings. The Trial Court rejected the contention urged on behalf of the Defendants that the Plaintiff would have to pay additional court fees on the basis of the proposed amendment. The Trial Court observed that the Plaintiff was not asking for possession of the premises but was only seeking a declaration in respect of the said premises. As indicated above, it is the said order dated 16-12-2014 which is sought to be taken exception to by way of the above Petition.

7 The Learned Counsel appearing for the Petitioners / Defendant Nos.1 and 2 would reiterate the case of the Defendant Nos.1 and 2 which was urged before the Trial Court in so far as the application for amendment is concerned. The Learned Counsel would contend that in the guise of seeking reliefs under MOFA but what the Plaintiff in fact seeking is setting aside of the right which is vested in the Defendant Nos.1 and 2 and therefore the Plaintiff is required to pay court fees on the said basis. The Learned Counsel in support of the said contention sought to place reliance on the Judgment of a Division Bench of this court in the matter of **Lakhiram Ramdas Vs. Vidyut Cable & Rubber**¹ wherein the Division Bench has observed that it is the duty of the

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court to see whether the prayer clause is cleverly worded and if the court comes to the conclusion that by seeking a particular prayer in fact some other relief is sought then it is the duty of the court to see that the requisite court fees are paid.

8 Per contra Mr. Kini the Learned Counsel appearing for the Respondent No.1 would support the impugned order and would contend that the amendments sought only further details have been given and consequential prayer made is the Suit as originally filed is under MOFA and continue to be so even after the amendment.

9 Having heard the Learned Counsel for the parties, in my view, there is no merit in the above Petition. As indicated above, the Suit as originally filed is for enforcement of the obligations of the Respondent No.3 developer, under MOFA. That the reliefs sought vide the amendment are only asserting the Plaintiff's right that is the rights of the unit purchasers who are the members of the Plaintiff society under the MOFA and it is towards that end that the declaration etc, have been sought in the Suit. However, the relief sought can be said to be under the aegis of MOFA and therefore the Trial Court was right in coming to a conclusion that the amendments are necessary for a complete and effectual adjudication of the Suit. The Trial Court has observed that what the Plaintiff is claiming is only the right to the common areas in the

plot of land on which the building wherein the Plaintiff society is situated. The Learned Counsel for the Petitioners sought to make submissions on the merits of the case of the Plaintiff in the amendment sought. It is well settled that at the stage of consideration of an application for amendment, the merits of the case as contained in the amendment sought need not be gone into. Since the amendments sought are only as regards the right of the Plaintiff society under MOFA there is no question of the nature of the Suit being changed.

10 In my view, having regard to the well settled principles which are applicable to the consideration of an application under Order VI Rule 17 of the Civil Procedure Code, the order passed by the Trial Court allowing the Chamber Summons for amendment of the Plaint cannot be faulted with. No case for interference in the Writ Jurisdiction of this Court is made out. The Writ Petition is accordingly dismissed.

11 Needless to state that the observations made in the instant order are only for the purposes of considering the order passed by the Trial Court allowing the amendment application, the Suit would be undoubtedly tried on its own merits and in accordance with law.

[R.M.SAVANT, J]