

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.6128 OF 2015

Jindal Developers ... Petitioner
Vs.
Babasaheb Murlidhar Pokale and others ... Respondents

Mr. Nikhil Wadikar i/b. Mr. Nandu Pawar for Petitioner.
Mr. Madhav Jamdar for Respondents.

CORAM : R. G. KETKAR, J.
DATE : DECEMBER 08, 2016

P.C. :

Heard Mr. Wadikar, learned Counsel for the petitioner and Mr. Jamdar, learned Counsel for the respondents at length. Rule. Mr. Jamdar waives service for respondents. In view of the narrow controversy involved in the Petition as also at the request and by consent of the parties, Rule is made returnable forthwith and the Petition is taken up for final hearing.

2. By this Petition under Article 227 of the Constitution of India, petitioner, hereinafter referred to as 'plaintiff' has challenged the judgment and order dated 17.11.2014 passed by the learned 3rd Joint Civil Judge, Senior Division, Satara below exhibit-42 in Special Civil Suit No.102 of 2012. By that order, the learned trial Judge rejected the application made by the plaintiff under Order 6, Rule 17 of the Code of Civil Procedure, 1908 (for short 'C.P.C.') for amending the plaint.

3. Plaintiff has instituted Suit inter alia praying for specific performance of contract dated 12.03.2011 after accepting the remaining consideration of Rs.3,44,23,600/-, among other prayers. Respondents, hereinafter referred to as 'defendants', have resisted the Suit by filing

written statement. During the pendency of the Suit, plaintiff filed application exhibit-43 on 02.09.2014 for amending the plaint. Plaintiff has proposed following amendments:

- a. substituting the words “M/s. Jindal Developers through Proprietor” by the words “for M/s. Jindal Developers” appearing in the cause title as also in the verification clause;
- b. incorporating paragraph 4A to contend that defendants did not deposit / encash 5 cheques issued by the plaintiff and this act was with a view to denying the legal rights of the plaintiff;
- c. substituting the figure “Rs.3,44,23,600/-” by the figure “Rs.3,49,23,600/-” appearing in paragraph 6 as also in the prayer clause 12(a); and
- d. alternatively, in the event Court comes to the conclusion that plaintiff is not in possession then for direction to defendants No.1 to 5 to handover possession.

4. Defendants filed their reply exhibit-44 resisting the application. By the impugned order, the learned trial Judge has rejected the application.

5. In support of this Petition, Mr. Wadikar submitted that as far as the amendment in terms of paragraphs 8(a), 8(c) and 8(d) is concerned, that is a formal amendment and it does not change the nature of the Suit. As far as the amendment in terms of paragraph 8(b) is concerned, reference is made to clause 5(a) of the agreement of sale to the various cheques issued by the plaintiff to the defendants as also the acknowledgment of the defendants about receipt of those cheques. Defendants filed written statement some time in September 2014. After going through the written statement, plaintiff realized that though the cheques were issued as far as back on 12.03.2011, defendants did not

deposit the said cheques. As the plaintiff acquired knowledge about this fact only after filing of the written statement, the said fact is required to be brought on record. He, therefore, submitted that the amendment as proposed in paragraph 8(b) for incorporating paragraph 4A in the Suit deserves to be allowed. As far as the amendment proposed in paragraph 8(e), in the alternative, adding prayer clause (b1) for recovery of possession is concerned, he submitted that in view of Section 22 of the Specific Relief Act, 1963 (for short 'Act'), the said prayer can be allowed even at the stage of execution. He, therefore, submitted that the impugned order deserves to be set aside.

6. On the other hand, Mr. Jamdar supported the impugned order. He fairly stated that as far as the amendment in terms of paragraph 8(a) as regards striking out the words “M/s. Jindal Developers through Proprietor” and substituting the same by the words “for M/s. Jindal Developers” is concerned, he is not opposing. As far as the amendment proposed in paragraph 8(b) is concerned, he submitted that basically, there was no agreement for sale between the parties. Plaintiff is an estate agent and his services were engaged for the purpose of finding out suitable buyer. He, therefore, submitted that there was no question of defendants depositing the cheques allegedly issued by the plaintiff.

7. As far as the amendment as proposed in paragraphs 8(c) and 8(d) for substituting figure of “Rs.3,44,23,600/-” by the figure “Rs.3,49,23,600/-” is concerned, he has taken me through paragraph 7 of the impugned order. For the reasons recorded in paragraph 7 of the impugned order, he submitted that the learned trial Judge rightly rejected the proposed amendment in paragraphs 8(c) and 8(d).

8. As far as the amendment as proposed in paragraph 8(e), in the

alternative, incorporating prayer clause (b1) for recovery of possession is concerned, he submitted that the learned trial Judge observed that the amendment is not necessary for determining the real question or controversy between the parties.

9. I have considered the rival submissions advanced by the learned Counsel appearing for the parties. I have also perused the material on record. As far as the amendment in terms of paragraph 8(a) is concerned, as Mr. Jamdar has not seriously opposed this, the same deserves to be allowed. As far as the amendment as proposed in paragraph 8(b) thereby incorporating paragraph 4A is concerned, I do not find any merit in the submissions of Mr. Wadikar. The learned trial Judge has observed that it is a matter of evidence as to whether plaintiff has issued those 5 cheques to the defendants and whether they have deposited those cheques in their account. The submission of Mr. Wadikar that plaintiff came to know this fact only after defendants filed their written statement cannot be accepted. According to the plaintiff, cheques were issued on 12.03.2011. It cannot be said that plaintiff realized this fact in September 2014 only after filing of the written statement. The learned trial Judge, therefore, rightly held that it is a matter of evidence.

10. As far as the amendment in terms of paragraphs 8(a) and 8(d) is concerned, by that amendment plaintiff wants to substitute the amount of “Rs.3,44,23,600/-” by “Rs.3,49,23,600/-”. In my opinion, the learned trial Judge should have allowed that amendment as basically it does not change the nature of the Suit. Initially plaintiff came with the case that he had issued cheques of Rs.5,00,000/- to the defendants in March, 2011. Defendants have denied the entire transaction. They have also not deposited the cheques. Having regard to the prayer clause (a), in my

opinion, the learned trial Judge should have permitted this amendment. Hence to that extent, the order also deserves to be set aside. Perusal of proviso to Section 22(2) of the Act empowers the Court to amend the plaint including prayer for relief of possession at any stage of the proceedings.

11. In view thereof, the impugned order deserves to be set aside and is accordingly set aside. Application exhibit-42 is partly allowed in the following terms:

- a. Amendment in terms of paragraphs 8(a), 8(c), 8(d) and 8(e) is allowed;
- b. Amendment in terms of paragraph 8(b) is rejected. By way of abundant caution, it is clarified that plaintiff is not entitled to incorporate paragraph 4A in the plaint.
- c. Rule is made absolute in the aforesaid terms with no order as to costs.

(R. G. KETKAR, J.)

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