

IN THE HIGH COURT OF JUDICATURE AT MUMBAI
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.11895 OF 2015

Niranjan P. Ray, the Partner of M/s. Nandan Builders ... Petitioner
Vs.
Milind Madhav Padhye and others ... Respondents

Mr. S. S. Kanetkar for Petitioner.

CORAM : R. G. KETKAR, J.
DATE : MARCH 30, 2016

P.C. :

Heard Mr. Kanetkar, learned Counsel for petitioner at length.

2. By this Petition under Article 227 of the Constitution of India, petitioner has challenged the judgment and order dated 21.01.2015 passed by the learned 32nd Joint Civil Judge, Junior Division , Pune below exhibit-103 in Regular Civil Suit No.4040 of 2012. By that order, the learned trial Judge rejected the application made by the petitioner, hereinafter referred to as defendant, under Order VI, Rule 17 of the Code of Civil Procedure, 1908 for amending the written statement.

3. Respondent No.1 herein has instituted Suit against the petitioner, who is the defendant No.1, for declaration that the Development Agreement dated 07.02.1987 between the plaintiff and defendant has been validly terminated and that plaintiff has validly revoked the Power of Attorney dated 30.04.1987. Plaintiff also prayed for returning of the original documents and for perpetual injunction restraining defendants from developing the land described in paragraph 1 of the plaint or doing any activities on the said land. Plaintiff has also sought possession of the suit property and future damages. During the pendency of the Suit, defendant No.1 filed application at exhibit-91 on 03.03.2011 expressing

willingness to deposit Rs.50,50,000/-. That application was allowed. In pursuance thereof, defendant No.1 deposited Rs.50,50,000/- by pay order No.098595 dated 03.03.2011 and the learned trial Judge ordered investing that amount in Fixed Deposit for six months. Defendant No.1 thereafter filed application on 12.09.2014 under Order VI, Rule 17 of C.P.C. for amending the written statement by incorporating paragraphs 7L and 7M in the written statement. By paragraph 7L, defendant No.1 wants to bring on record factum of depositing Rs.50,50,000/- on 30.03.2011. By paragraph 7M, defendant No.1 wants to bring on record the Suit instituted by the plaintiff for declaration and injunction before the Court of Civil Judge Junior Division (PMC Court) Pune bearing No.1264 of 2013 wherein plaintiff has challenged the construction activity carried out by the defendant No.1. By the impugned order, the learned trial Judge rejected the application on the ground that as far as the deposit of Rs.50,50,000/- is concerned, it is a matter of record and need not be pleaded. As far as bringing on record filing of the Suit by the plaintiff is concerned, the learned trial Judge observed that it has no bearing on the merit of the Suit as also amendments are not necessary for deciding real controversy between the parties in the Suit.

4. Mr. Kanetkar submitted that admittedly, the said developments are pending the present Suit. It is, therefore, necessary to bring those subsequent developments on record. It is for that purpose defendant No.1 filed application for amendment. In my opinion, the learned trial Judge was justified in rejecting the application. As observed earlier, pursuant to the order passed by the learned trial Judge below exhibit-91, defendant No.1 deposited Rs.50,50,000/- and the same is matter of record. As far as assertions made in proposed paragraph 7M are concerned, the learned trial Judge has observed that the said amendment is not necessary for deciding the controversy between

the parties. The present Suit is for declaration that the Development Agreement dated 07.02.1987 is validly terminated as also plaintiff has validly revoked Power of Attorney dated 30.04.1987. As far as R.C.S. No.1264 of 2013 is concerned, plaintiff has challenged the construction activity carried out by the defendant No.1. It will be open to the defendant No.1 to raise all contentions in that Suit and, therefore, the amendment proposed in terms of paragraph 7M is absolutely not necessary for deciding the present Suit. Hence, Petition fails and the same is dismissed.

5. It is, however, expressly made clear that where a decree is appealed from by the petitioner, any error, defect or irregularity in the impugned order, affecting the decision of the case, may be set forth as a ground of objection in the memorandum of appeal as contemplated by Section 105(1) of C.P.C.

(R. G. KETKAR, J.)

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