

IN THE HIGH COURT OF JUDICATURE AT MUMBAI

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.4114 OF 2016

Dura Homes Builders & Developers Private Limited
through its Directors Fahad A. Siddiqui and others ... Petitioners
Vs.
M/s. Vin Semi Conductors Pvt. Ltd. through its
Director Mrs. Shalaka Subhash Pawar and another ... Respondents

WITH

WRIT PETITION NO.4124 OF 2016

Dura Homes Builders & Developers Private Limited
through its Directors Fahad A. Siddiqui and others ... Petitioners
Vs.
M/s. Vishal Arts Sign & Graphics Pvt. Ltd. through its
Director Mrs. Shalaka Subhash Pawar and another ... Respondents

Dr. Abhinav Chandrachud a/w. Mr. Dharmesh Pandya i/b. Ashiwn Pandya &
Associates for Petitioners in both the Petitions.
Mr. P. S. Dani, Senior Advocate i/b. Jayesh Madhav Joshi for Respondent
No.1 in both the Petitions.

CORAM : R. G. KETKAR, J.

DATE : APRIL 13, 2016

P.C. :

Heard Dr. Chandrachud, learned Counsel for petitioners and
Mr. Dani, learned Senior Counsel for respondent No.1 in both the
Petitions at length.

2. These Petitions are directed against the order dated 08.02.2016
passed by the learned Civil Judge, Junior Division, Bhiwandi allowing
applications under Order VI, Rule 17 of the Code of Civil Procedure,
1908 (for short 'C.P.C.') filed by the respondent No.1-plaintiff for
amending the Suits.

3. Dr. Chandrachud strenuously contended that this is the second occasion where plaintiff has filed application under Order VI, Rule 17 of C.P.C. for amending the plaint. Initially, he filed application for adding the parties, which was allowed and subsequently, the present application is filed. By the proposed amendment, plaintiff wants to produce documents for the first time, which were not produced along with the Suit. He relied upon Order VII, Rule 14(3) of C.P.C., which lays down that a document which is not annexed along with the plaint, shall not be received in evidence without the leave of the Court. By filing application under Order VI, Rule 17 of C.P.C., plaintiff intends to give a go by to provisions of Order VII, Rule 14(3) of C.P.C. In other words, plaintiff is circumventing rigours laid down in Order VII, Rule 14(3) of C.P.C. In any case, the learned trial Judge was not justified in allowing the application without imposition of costs. In the absence of imposition of costs, plaintiff will file successive applications for amending the plaint. The imposition of costs would have been disincentive to the plaintiff for amending the plaint. In support of these submissions, he relied upon the following decisions:

- a. ***Ramchandra Sakhambari Mahajan Vs. Damodar Trimbak Tanksale***, AIR 2007 SC 2577, and in particular paragraphs 4 and 14; and
- b. ***Dalip Kaur Vs. Major Singh***, AIR 1996 P & H 107, and in particular paragraph 3 thereof to contend that the trial Judge should have imposed costs while allowing the applications.

4. Dr. Chandrachud submitted that in case the Court is not inclined to interfere with the impugned order, four weeks time may be granted for inspection and for filing additional written statement.

5. On the other hand, Mr. Dani supported the impugned order. He

submitted that trial is yet to commence. He submitted that the learned trial Judge has recorded that the Suit is instituted on 02.09.2015. Defendants filed written statement on 30.09.2015 and when the Suit was posted on 14.10.2015, plaintiff presented applications for amendment. In other words, plaintiff has filed the applications with due diligence without there being any amount of delay.

6. I have considered the rival submissions advanced by the learned Counsel appearing for the parties. I have also perused the material on record. As noted earlier, after filing of written statement on 30.09.2015, the Suit was posted on 14.10.2015, and on that date, plaintiff has presented the applications for amendment. It is not in dispute that the issues are yet to be framed. Thus, trial of the Suit is yet to be commenced. Understood thus, I do not find that the learned trial Judge has committed any error in allowing the applications for amendment.

7. Dr. Chandrachud relied upon decision of the Apex Court in the case of **Ramchandra Sakharam Mahajan** (*supra*) as also decision of Punjab & Haryana High Court in the case of **Dalip Kaur** (*supra*). In both the cases, the Apex Court and Punjab & Haryana High Court held that if there is delay in seeking the amendment, that delay could be compensated by awarding cost to the contesting defendants. In the present case, the learned trial Judge has recorded a categorical finding that plaintiff has filed applications without any amount of delay. In view thereof, I do not find that the learned trial Judge has committed any error in passing the order to the effect that cost in the main cause. Hence, no case is made out for invocation of powers under Article 227 of the Constitution of India. Hence, Petitions fail and the same are dismissed.

8. 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.

9. The defendants are given four weeks time for taking inspection and filing additional written statement. The learned trial Judge will postpone the hearing of application at exhibit-5 for interim relief for six weeks from today. Order accordingly.

(R. G. KETKAR, J.)

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