

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.9953 OF 2016

Shri Nazir Ahmed Dingmar.] ... Petitioner

Versus

1. Shri Jyotiprakash Kriparam Sharma,]
 2. Imtiaz Usman Gani Dingmar.] ... Respondents

Mrs. A. R. S. Baxi for Petitioner.
 None for Respondents.

CORAM :- N. M. JAMDAR, J.
DATE :- SEPTEMBER 08, 2016

P. C. :-

1. The petitioner challenges the order passed by the learned Civil Judge, Senior Division, Daman, allowing the application for amendment of plaint sought for by the respondents-plaintiffs.

2. When the application for amendment was moved; the trial had not commenced. At that stage, Courts are generally liberal in granting amendment, subject to well established parameters such as mutual destructive pleas, etc. The learned Counsel for petitioner submits that there is no pleading in the plaint seeking any specific performance and therefore, since the suit is not filed invoking the provisions of Specific Performance Act, by way of amendment, the

provisions of Section 22 of the Act cannot be invoked. This argument of the learned Counsel for petitioner relate to the merits of the amended portion. At this stage, the petitioner has only amended his plaint. Whether the petitioner is entitled to reliefs sought for on the basis of amendment, is a matter of merits at the time of trial when the petitioner can always advance submissions which are sought to be advanced in this petition. The case of the respondent is that the plaintiff was the owner and lessee of certain parts of the property which, upon re-construction, is entitled to as an owner. The reliefs sought for are that he is a tenant in respect of the residential flat and a declaration for ownership in respect of the shop premises and for a decree of specific performance by way of amendment and additional prayer of compensation in the alternative has been sought for. Whether there is any pleadings to support the prayer for specific performance in the plaint, as stated above, is a matter of trial. The petitioner will get an opportunity to file an additional written statement to the written amended portion and therefore, the petitioner is not prejudiced. Further, all contentions of the petitioner on merits are open during the course of trial. In the circumstances, keeping all the contentions of the parties on merits open, the Writ Petition is rejected. It is open to the petitioner to file an additional written statement.

(N. M. JAMDAR, J.)