

FARAD CONTINUATION SHEET
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.12345 OF 2015

Uma Narendra Patel & Anr.

.. Petitioners

vs.

Bipinchandra Natwarlal Shah & Ors.

.. Respondents

Mr.PN.Joshi i/b Mrs.Vrushali R. Raje for the petitioners

Ms.Alpana Ghone with Mr.Vileena Nirasee i/b M/s.Shah & Sanghavi for
the respondent no.1

CORAM : K. K. TATED, J.
DATE : JUNE 10, 2016

PC.:

- 1 Heard the learned counsel for the parties.
- 2 By consent of both the parties, matter is taken on board for final hearing at the stage of admission.
- 3 By this petition, under Article 227 of the Constitution of India, petitioner defendant no.1a and 1c challenges the order dated 13.10.2014 passed by Bombay City Civil Court at Bombay in Chamber Summons No.151 of 2012 in S.C.Suit No.8878 of 1993 (High Court Suit No.1560 of 1993) allowing the respondent plaintiff to carry out amendment in plaint.

4 For the sake of convenience, the nomenclature of the parties as is stated in the plaint will be referred to hereinafter as the petitioner defendant and respondent plaintiff.

5 The defendant agreed to sell Flat no.54-A on 5th floor, admeasuring 485 sq.ft. in building known as “Suryakiran”, 551, Pan Galli, August Kranti Marg, Mumbai 400 036 for sum of Rs.17 lacs. The plaintiff paid Rs.1,80,000/- to the defendant. Out of Rs.1,80,000, Rs.1,00,000/- was kept with the Mediator and Rs.80,000/- was paid to the defendant. As the defendant failed to execute sale deed, plaintiff filed Suit for specific performance of agreement dated 26.9.1991. In that Suit, the plaintiff claimed following reliefs:

“(a) That it may be declared by this Hon'ble Court that the agreement for sale dated 26th September 1991 is valid, binding and subsisting.

(b) That this Hon'ble Court be pleased to order and decree Late Arvind Vallabhbhai Patel & original defendant no.1 and original defendant nos.2 and 3 to specifically perform the agreement for sale dated 26th September, 1991, Exhibit “B” hereto and to do all such acts, deeds, and things which are necessary for that purpose.

(c) That in the event of this Hon'ble Court granting a decree for specific performance, this Hon'ble Court be pleased to appoint an office of this Hon'ble Court, to execute the documents as may be required for effectual transfer of the said flat and the said shares in favour of the plaintiff on behalf of the Late Arvind Vallabhbhai Patel & original defendant no.1 and original defendant nos.2 and 3, in the event of the defendants fail and neglect to execute the documents during the time limit

fixed by this Hon'ble Court for completion of the transaction.

(d) That in the event of this Hon'ble Court coming to the conclusion that the plaintiff not be granted specific performance of the agreement for sale dated 26th September 1991 in that event, this Hon'ble Court be pleased to order and decree Late Arvind Vallabhbhai Patel & original defendant no.1 and original defendant nos.2 and 3 to pay to the Plaintiffs the sum of Rs.30,00,000/- as per the particulars Exhibit "R" hereto as and by way of damages and compensation with interest thereon at the rate of 21% per annum from the date hereof till payment and/or realisation.

(e) In the event of this Hon'ble Court not granting specific performance of the Agreement for Exhibit "B" hereto, the Defendants be ordered and decreed to pay to the Plaintiff a sum of Rs.1,80,000/- as per particulars Exhibit "S" hereto being the refund of the amount paid by the plaintiff to the Defendants with interest thereon at the rate of 21% per annum from the date hereto till payment and/or realisation.

(f) That in the event of this Hon'ble Court awarding damages and refund of money as stated hereinabove, the said flat, be charged in favour of the plaintiff, till the entire amount awarded is paid off to the plaintiff.

(g) That in the event of the Defendants failing and/or neglecting to pay the amount of damages or refund of Earnest Money, as awarded by this Hon'ble Court the said flat described in Exhibit "A" hereto alongwith the said shares be sold by and under the directions of this Hon'ble Court and the Net Sale Proceeds thereof be paid over to the plaintiff towards the decretal amount.

(h) That pending the hearing and final disposal of the suit, Court Receiver, High Court, Bombay or some fit and proper person be appointed Receiver of the said flat described in Exhibit "A" hereto with all powers under

Order 40, Rule 1 of the C.P.C.1908.

(i) That pending the hearing and final disposal of the suit, the Defendants by themselves, their servants and agents be restrained by an order and injunction of this Hon'ble Court from in any manner disposing off, parting with possession, encumbering alienating or creating any third party's right in respect of the flat described in Exhibit "A" hereto or any part thereof and the said shares more particularly described in the paragraph No.1 above.

(j) Ad-interim reliefs in terms of prayers (h) and (i) above.

(k) Cost of the suit.

AND

(i) For such further and other reliefs as the nature and circumstances of the case may require."

6 The plaintiff valued the Suit at Rs.30,00,000/- for the purpose of Court Fees and Jurisdiction. Due to change of pecuniary jurisdiction of the City Civil Court, the matter was transferred to Bombay City Civil Court at Bombay. The defendants filed their written statement dated 13.8.1993. Thereafter, the court framed issue on 7.4.2011.

7 The plaintiff preferred Chamber Summons No.151 of 2012 for carrying out amendment in plaint claiming damages to the tune of Rs.2,73,96,514/- instead of Rs.30,00,000/- which was originally claimed and also consequential reliefs. In Affidavit in support of Chamber Summons, the plaintiff in paragraph 2 submitted that since

more than 18 years have passed from filing of the Suit and prices in respect of Suit Flat have also increased in geometrical proportions and the prices of the flats similar to the suit flat in the same locality have gone up ten folds. Hence, it is necessary to claim enhanced compensation.

8 The said Chamber Summons was opposed by the defendant by filing their Affidavit in reply dated 18.2.2014. The defendant raised objection that the plaintiff failed to make out any case for delay of more than 23 years in filing the Chamber Summons for carrying out amendment in the plaint. The defendant also pleaded that at the time of filing the Suit, the plaintiff determined their claim for damages to the tune of Rs.30,00,000/-. Hence, there is no question of allowing the said Chamber Summons.

9 Considering the submissions of both the parties and their respective affidavits, Trial Court by order dated 13.10.2014 allowed the Chamber Summons. Hence, the present Writ Petition.

10 Heard the learned counsel for the parties. The learned counsel for the defendant submits that the Trial Court erred in coming to the conclusion that the plaintiff made out a case under Order VI Rule 17 of the Civil Procedure Code, 1908 for carrying out amendment in the plaint after more than 23 years. He submits that in the entire affidavit in support of Chamber Summons plaintiff failed and neglected to explain the delay of more than 23 years in preferring the application for carrying out amendment. He submits that at the time of filing the

Suit, plaintiff specifically quantified damages of Rs.30,00,000/- in lieu of specific performance of agreement. He submits that if quantified damages have been claimed by the plaintiff in the plaint, there is no question of allowing them to carry out amendment in the plaint and claim higher compensation.

11 The learned counsel for the defendant submits that Trial Court mainly relied on section 21 of the Specific Relief Act, 1963. He submits that as per the provisions of Section 21 of the Specific Relief Act, 1963 if compensation is not claimed at the time of filing the Suit, then only plaintiff can make application for carrying out amendment in the plaint for claiming compensation. He submits that in the present proceeding, the plaintiff had already quantified damages to the tune of Rs.30,00,000/-. Hence, there is no question of allowing the plaintiff to claim more compensation under Section 21 of the Specific Relief Act.

12 The learned counsel for the defendant submits that at present the pecuniary jurisdiction of the Trial Court is upto Rs.1 crore only. He submits that plaintiff by way of amendment claimed compensation to the tune of Rs.2,73,96,514/- which is beyond the pecuniary Jurisdiction of the Trial Court. He submits that if the plaintiff is allowed to carry out amendment as per their application under Order VI Rule 17 of the Civil Procedure Code, 1908, matter is required to be transferred to the High Court on the Original Side. In that case, defendant may lose their chance of Appeal in case the Trial Court holds against them. Hence, order passed by Trial Court allowing plaintiff to carry out amendment in plaint is required to be set aside. In support of this

contention, the learned counsel for the defendant relies on the judgement of the Apex Court in the matter of *Shiv Gopal Sah @ Shiv Gopal Sah vs. Sita Ram Saraugi and Ors. 2007 DGLS (Soft) 342 and Chander Kanta Bansal vs. Rajinder Singh Anand, (2008) 4 SCC 117*. In both these authorities, the Apex Court held that if there is a delay in making application under Order VI Rule 17 of the Civil Procedure Code, 1908 the same is required to be explained by the applicant. If there is no explanation for inordinate delay and if sufficient cause is not shown for condonation of delay, in that case, application under Order VI Rule 17 of the Civil Procedure Code, 1908 for carrying out amendment in plaint required to be set aside.

13 On the other hand, the learned counsel for the plaintiff vehemently opposed the present Writ Petition. She submits that the Trial Court after considering the affidavits of the parties and facts of the matter rightly held that plaintiff made out a case for allowing the application under Order VI Rule 17 of the Civil Procedure Code, 1908 for carrying out amendment in the plaint. She submits that the Suit was filed in 1993. At that time, on the basis of market value for acquiring alternative accommodation in the same locality would have required near about Rs.30,00,000/-. Hence, at the time of filing the plaint, plaintiff claimed compensation of Rs.30,00,000/-. She submits that matter is pending for final disposal for last several years. During this period the prices of real estate have increased rapidly.

14 The learned counsel for the plaintiff submits that plaintiff made enquiry and learnt that if he wants to acquire flat of the same area in

the same locality then, they have to pay more than Rs.1 crore. Hence, the plaintiff filed Application under Order VI Rule 17 of the Civil Procedure Code, 1908 for carrying out amendment in the plaint. She submits that after considering the evidence on record, the Trial Court rightly allowed the plaintiff's application. She submits that the said amendment is not going to substantially affect right, title and interest of the defendants at all. She submits that court may or may not allow entire compensation as claimed by the plaintiff in the present proceeding. Hence, there is no question of interfering with the well reasoned order passed by Trial Court in the Chamber Summons No.151 of 2012. In support of her contention, the learned counsel for the plaintiff relied on the order dated 21.7.2014 passed by this court (Coram: S.C.Gupte, J.) in Chamber Summons No.139 of 2014 in Suit No.3463 of 1987 in the matter of *M/s.Sagar Construction Co. v/s. Manoharlal Kishorilal Gupta & Ors.*, judgment of our High Court in the matter of *Andheri Bridge View Co-op. Hsg.Society Ltd. vs. Krishnakant Anandrao Deo and others*, AIR 1991 BOM 129, judgment in the matter of *Allahabad Law Journal Co.Ltd. v. M/s.Skyways Construction Corporation and Others*, AIR 1992 DEL 9, *Andhra Bank v. ABN Amro Bank N.V. & ors.*, 2008 (1) BCR 836, *Manohar Dhundiraj Joshi vs. Jhunnulal Hariram Yadao and others*, 1983 BCI (0) 43 and *Benisham Mohanlal Khetan vs. Mahadeo Tukaram Borkar*, 1986(2) BCR 352.

15 The learned counsel for the plaintiff submits that our High Court in the matter of *M/s.Sagar Construction Co. v/s. Manoharlal Kishorilal Gupta & Ors.*(Supra) allowed the Chamber Summons claiming

additional compensation in support of specific performance of agreement for sale. Our High Court in the matter of Andheri Bridge View Co-op. Hsg.Society Ltd. vs. Krishnakant Anandrao Deo and others (Supra) held that for carrying out amendment, provisions of Order II Rule 2 of the Civil Procedure Code, 1908 do not come in the way for claiming additional compensation. In the matter of Allahabad Law Journal Co.Ltd. v. M/s.Skyways Construction Corporation and Others (Supra), High Court held that plaintiff can claim enhanced compensation pending Suit. In the matter of Andhra Bank v. ABN Amro Bank N.V. & ors., (Supra), the Apex Court held that at the time of allowing application Order VI Rule 17 of the Civil Procedure Code, 1908 for carrying out amendment, only point to be seen is whether such amendment would be necessary for decision of controversy between the parties in Suit. In the matter of Manohar Dhundiraj Joshi vs. Jhunnulal Hariram Yadao and others (Supra), the plaintiff was allowed to claim compensation though the same was not claimed in the original plaint.

16 On the basis of these submissions and authorities, the learned counsel for the plaintiff submit that there is no substance in the present Writ Petition and same is required to be dismissed with costs.

17 I have heard both the sides at length. It is to be noted that there is no dispute that at the time of considering the application under Order VI Rule 17 of the Civil Procedure Code, 1908, it is not necessary to consider the length of delay in preferring an application. It is to be noted that if amendment is required to decide the dispute between the

parties and without that it is not possible to decide the matter in the interest of Justice, then such amendment is required to be allowed.

18 In the present proceeding at the time of filing the Suit the plaintiff specifically stated in the plaint that they suffered a loss. They made averments and prayer in body of plaint claiming compensation of Rs.30,00,000/-. Same was determined by the plaintiff on the basis of market value on the date of filing of Suit. Just because the Suit is pending for the last several years plaintiff cannot claim additional compensation. Apart from that there was delay of more than 23 years on the part of plaintiff for making application under Order 6 Rule 17 of the Civil Procedure Code, 1908.

19 Initially suit was filed by the plaintiff in High Court on the Original Side. Thereafter there was change of pecuniary Jurisdiction of the Bombay City Civil Court at Bombay. Same was made to Rs.1 crore. Hence, Suit was transferred to that Court. By way of amendment plaintiff is claiming damages of more than Rs.1 crore. If order passed by the Trial Court allowing the plaintiff to carry out amendment, remains in force then, City Civil court ceases Jurisdiction to entertain the said Suit. If matter transferred to High Court in view of amendment of plaint, in that case, defendant loses his valuable right of Appeal.

20 The authority cited by the plaintiff are not applicable in the facts and circumstances of the present case. In the matter of M/s.Sagar Construction Co. v/s. Manoharlal Kishorilal Gupta & Ors.(Supra), this

court allowed plaintiff to carry out amendment because plaintiff has paid amount to State Bank of India in Suit No.199 of 1986 as the Suit Property was mortgaged with the said bank. Hence, this authority is not applicable in the case in hand. Even the other authorities cited by the plaintiff are not applicable in the facts and circumstances of the present case. In the case in hand, plaintiff made application for carrying our amendment in plaint after more than 23 years.

21 Considering these facts and the authorities as referred hereinabove, I am of the opinion that the Trial Court erred in coming to the conclusion that plaintiff is entitled to carry out amendment as per Application under Order VI Rule 17 of the Civil Procedure Code, 1908. Hence, same is required to be set aside. Hence, following order is passed:

- a) Order dated 13.10.2014 passed by Bombay City Civil Court at Bombay in Chamber Summons No.151 of 2012 in S.C.Suit No.8878 of 1993 (High Court Suit No.1560 of 1993) is set aside.
- b) Chamber Summons No.151 of 2012 stand rejected.
- c) Hearing of Special Civil Suit No.8878 of 1993 (High Court Suit No.1560 of 1993) is expedited.
- d) This court expects that the court below to decide the Suit as early as possible preferably on or before 31.12.2016.

- e) All contentions of both the parties are kept open.
- f) No order as to costs.

JUDGE