

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**ORDINARY ORIGINAL CIVIL JURISDICTION**

**APPEAL (L) NO. 378 OF 2016
IN
CHAMBER SUMMONS (L) NO. 1579 OF 2016
IN
SUIT NO. 2894 OF 2011
WITH
NOTICE OF MOTION (L) NO. 2951 OF 2016
IN
APPEAL (L) NO. 378 OF 2016**

M/s. Shraddha Shelters Pvt. Ltd.	..	Appellant
versus		
New Purshottam Nagar Co-op.		
Hsg. Society Ltd. & Ors.	..	Respondents

Dr. Birendra Saraf with Ms Puja Kshirsagar with Mr. Rohan Kadam
i/b. Mr. Yogesh Adhia for Appellant.
Ms. Rajani Iyer – Senior Advocate with Mr. Niranjana Vaghela i/b.
Pandya & Co. for Respondent No. 1.
Mr. Aditya Chitale for Respondent No. 5

**CORAM: DR. MANJULA CHELLUR, C. J. AND
M. S. SONAK, J.
DATE : 13 OCTOBER 2016**

P.C.:

1] The appellant appeals order dated 29 September 2016, by which the learned Single Judge has ordered the following:

(a) that the abatement of the suit as against legal representatives of deceased defendant no.1 be set aside; delay in bringing the legal representatives on record be condoned; and leave to bring on record the legal representatives of the deceased defendant no. 1;

- (b) impleadment of respondent no. 3 as defendant no. 6 in the suit;
- (c) leave to amend the plaint as per the schedule annexed to the chamber summons;

2] Mr. Birendra Saraf, learned counsel for the appellant whilst maintaining that the challenge in the appeal is to all the aforesaid three directions, emphasised upon the leave to amend the plaint in terms of the schedule annexed to the chamber summons. Relying upon the decision of the Hon'ble Supreme Court in the case of ***Dilboo (Smt.) Dead) by LRs. & Ors. vs. Dhanraj (Smt) (Dead) & Ors.***¹, Mr. Saraf submitted that the plaintiff is deemed to have acquired knowledge of the conveyance on 24 October 2009, which is the date of registration of the conveyance and therefore, any challenge to the said conveyance attempted to be instituted on 16 July 2016, is *ex facie* barred by law of limitation. Mr. Saraf also submitted that in the past, the respondent / plaintiff was declined leave to amend the plaint on the ground that the amendments applied for raise mutually destructive pleas. The amendment, which is now permitted by the impugned order, is in no manner different and therefore, ought not to have been permitted. For these reasons, Mr. Saraf submitted that the impugned order warrants interference.

3] We have considered the submissions made by the learned counsel for the parties. We have also perused the record. In our opinion, the impugned order, does not call for any interference.

4] In this case, the learned Single Judge, has observed that it is quite premature to hold that the relief which the plaintiff seeks by way

¹ (2000) 7 SCC 702

of amendment, is *ex facie* barred by law of limitation. This is correct. Looking to the circumstances of the matter, evidence will be necessary. Accordingly, leave to amend has been rightly granted by keeping the issue of limitation open, to be decided at the time of the final hearing of the suit. There is neither any jurisdictional error nor any perversity of approach.

5] This is also not a case of the plaintiff's raising any *ex facie* mutually destructive pleas, as may have been the position on the earlier occasion. In any case, if discretion has been exercised to permit amendment and there is neither any arbitrariness or perversity in the exercise of such discretion is demonstrated, we see no reason to interfere with the impugned order. This is not a case of any serious prejudice to the appellant. All defences available to the appellant have been expressly reserved to them. The impugned order records that the defendants in the suit have not even filed their written statement as yet. Pre-trial amendments are to be liberally construed. There is no hint of lack of *bona fides*.

6] For all the aforesaid reasons, we dismiss this appeal. There shall however, be no order as to costs.

7] In view of dismissal of the appeal, notice of motion does not survive and is disposed of accordingly.

CHIEF JUSTICE

(M. S. SONAK, J.)