

Vidya Amin

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION No. 7612 OF 2017

Atish Khandu Dhondwe & Anr. ... Petitioners
Vs.
M/s. Dharmaraj Developers & Ors. ... Respondents

Mr. Arvind Aswani i/b. Vikrant Suryawanshi, Advocate for the
Petitioners.

CORAM: **MRS.MRIDULA BHATKAR, J.**
DATE: **13th July, 2017.**

P.C.:

Not on board. Upon mentioning, taken on board.

2. This Writ Petition is directed against the order dated 3rd March, 2017 passed by the learned District Judge-1 and Judge, Commercial Court, Pune below Exhibit 35 thereby allowing the Application for amendment of pleadings under Order 6 Rule 17 of Code of Civil Procedure; and also the order dated 3rd March, 2017 passed below Exhibit 37 allowing the Application to add certain facts in temporary injunction Application (Exhibit 5). The respondents have filed the suit for specific performance, perpetual injunction and declaration against the petitioners. In the said suit, the application for amendment of the pleadings filed by the respondents/plaintiffs was allowed. Hence, this

Writ Petition.

3. The learned counsel for the petitioners/original defendants submitted that the respondents/plaintiffs are seeking extensive amendment in the plaint. The facts which are pleaded by way of amendment were within the knowledge of the respondents/plaintiffs and the amendments in the plaint are going to change the nature of the suit, therefore, these amendments are not to be allowed. He further submitted that the order passed below Exhibit 37 is also erroneous. The Application (Exhibit 37) was made to add certain facts in temporary injunction Application (Exhibit 5) and this Application does not contain the pleadings as contemplated in the plaint under Order 6 Rule 1 of CPC and therefore, the said order is also to be set aside.

4. Perused both the orders. Special Civil Suit No. 226 of 2017 was filed on 5th July, 2016. The Application for amendment, i.e., Exhibit 35 was made in December, 2016 and it was allowed on 3rd March, 2017. Considering the chronological development, though written statement is filed by the petitioners/defendants, the view taken by the trial Court that this amendment is to be allowed, as

there is not much time gap between filing of the suit and filing of the Application for amendment, cannot be faulted with. The submissions of the learned counsel for the petitioners that the contents in the Application for temporary injunction (Exhibit 5) do not constitute a part of plaint, is correct. The Application Exhibit 37 was made for adding certain facts in temporary injunction Application (Exhibit 5), which is a consequential addition pursuant to the Application under Order 6 Rule 17 of Code of Civil Procedure. Under Order 39, the application for interim relief can be filed not only once but also twice if such case is made out and therefore, if such addition is allowed, that order is also not found incorrect. Hence, Writ Petition is dismissed.

(MRIDULA BHATKAR, J.)