

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.13685 OF 2017

Shriniwas Narayan Kamat	 Petitioner
V/s.	
Vasundhara Townscape (Pvt.) Ltd.	 Respondent

Mr. Dushyant S. Pagare for the Petitioner.

None for the Respondent.

CORAM : DR. SHALINI PHANSALKAR-JOSHI, J.

DATE : 12TH DECEMBER 2017.

P.C. :

1. Heard Mr. Pagare, learned counsel for the Petitioner.

2. By this Petition, filed under Articles 226 and 227 of the Constitution of India, the Petitioner is challenging the order dated 2nd August 2017 passed by the 3rd Joint Civil Judge, Senior Division, Kalyan, below "Exhibit-29" in Regular Civil Suit No.39 of 2013, thereby allowing the Respondent-Plaintiff's application for amendment in the plaint, filed under Order VI Rule 17 of C.P.C.

3. The facts of the Suit are to the effect that, the Respondent had filed a Suit, initially, simplicitor for an injunction and after the application for

temporary injunction came to be rejected by the Trial Court and the Appellate Court, she filed an application for amendment in the plaint by seeking the relief of possession of the suit flat.

4. The said application was resisted by the Petitioner-Defendant on the count that, since before filing of the Suit, Respondent-Plaintiff was very much aware that she was not in possession of the suit flat, despite that, Respondent-Plaintiff has not claimed that relief of possession in the Suit and claimed only the relief of injunction. Only when her application for temporary injunction was rejected upto the Appellate Court, now, to give go-bye to the plea of limitation, the relief of possession is claimed by way of amendment in the plaint and it is done on the basis of the averments made in the written statement.

5. According to learned counsel for the Petitioner, the conduct of the Respondent was not at all diligent. No reason is given as to why this relief of possession was not claimed in the Suit, when Respondent was very much aware that she was dispossessed from the suit flat and F.I.R. to that effect was also filed. Thus, according to learned counsel for the Petitioner, the impugned order passed by the Trial Court, allowing the application for amendment, needs to be quashed and set aside, it being not in accordance with the settled principles of law, it is changing the nature of the Suit and amendment sought may take the Suit beyond the pecuniary jurisdiction of the Trial Court.

6. Perusal of the impugned order passed by the Trial Court clearly goes to reveal that the application for amendment in the plaint was filed by the Respondent before framing of issues and, therefore, at that stage, the trial was not commenced. It may be true, that, initially, the Respondent has claimed only the relief of temporary injunction, but then, it does not bar the Respondent from amending the plaint to claim the relief of possession, when it was categorically averred by the Petitioner in the written statement that Respondent was not in possession and it was also held in the judicial orders on temporary injunction passed by the Trial Court and District Court that Respondent was not in possession of the suit flat. In such situation, in order to avoid multiplicity of proceedings and to put an end to the litigation finally, if the Trial Court has permitted the amendment as sought, in the plaint to the Respondent to seek additional relief of possession, it cannot be said that the impugned order passed by the Trial Court suffers from any illegality, so as to warrant interference therein in this writ jurisdiction.

7. As regards the contention that the impugned amendment, if allowed, may exceed the pecuniary jurisdiction of the Court and take the Suit out of pecuniary jurisdiction of the said Court, needless to state that, after the amendment is carried out, the Trial Court will take necessary steps in that direction, if it is found that Suit exceeds its pecuniary jurisdiction.

8. The further grievance that the cause of action for seeking the relief of possession is barred by limitation, that contention can also be raised only after the amendment is carried out and the relief of possession is allowed to be brought on record. The Trial Court will definitely frame necessary issue relating to bar of limitation to that effect.

9. As to the due diligence on the part of the Respondent in seeking amendment, the impugned order passed by the Trial Court reveals that the Trial Court has, for that purpose, awarded the cost of Rs.1,000/- to the Petitioner to compensate the delay.

10. In view thereof, this Court does not find that any grounds are made out for interfering in the impugned order passed by the Trial Court. Writ Petition, therefore, being without merits, stands dismissed.

[DR. SHALINI PHANSALKAR-JOSHI, J.]