

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.473 OF 2017
WITH
CIVIL APPLICATION NO.600 OF 2015
IN
SECOND APPEAL NO.272 OF 2015

Nagnath Hariba Kalagote Applicant

Vs.

Gurubasappa Tipanna Kuntoji Respondent

Mr. Siddesh Pilankar i/by Mr. Uday Warunjikar for the Appellant and Applicant in CA No. 600 of 2015.

Mr. R.S. Alange for the Applicant in CA No.473 of 2017 and Respondent.

Coram : N.M. Jamdar, J.

Date : 3 May 2017

P.C.:

Heard the learned counsel for the parties. Reply affidavit has been filed. By this Civil Application, an amendment is sought to amend the prayer clause in Regular Civil Suit No. 1302 of 2012.

2 The Second Appeal has been filed the original Defendant, who had sought a decree for specific performance of contract. The suit was decreed by the learned Civil Judge by the judgment and order dated 26 February 2013. The Appeal filed by the Appellant, the Respondent in the Civil Application was dismissed.

3 The issue that has been raised by the Appellant in the Second Appeal is whether for lack of any prayer for possession, the courts have granted decree of possession. Present Civil Application has been filed to incorporate such prayer in the plaint.

4 Both the Courts have granted the decree of specific performance and the contentions of the original Appellants have been rejected. The sole contention that was in the Appeal advanced is regarding lack of a specific prayer. Reliance is placed by the Appellant on the decision of this Court in ¹*Lotu Bandu Sonavane vs. Pundalik Nimba Koli*. Facts of this decision would show that identical question arose for consideration before the learned Single Judge. The learned Single Judge was considering the Revision Application arising from order passed by the learned Civil Judge in execution proceedings from decree for specific performance. In the plaint filed by the Petitioner therein, no specific prayer for possession was made and only a prayer

¹ 1985 *Maharashtra Law Journal* 359

for specific performance of agreement of sale was sought. In view of Section 22(2) of the Specific Relief Act, the executing Court rejected the prayer of the Petitioner for possession. In the Revision, the Petitioner sought amendment of the plaint. Question arose before the learned Single Judge as to whether the relief of possession would be considered as ancillary relief and whether amendment to the plaint at the stage of execution could be granted. As regards the aspect of amendment, the learned Single Judge observed thus :

“8. As mentioned above the petitioner has also sought amendment of the plaint for including the claim for possession of the property in question. Proviso to sub-sec. (2) of [Section 22](#) of the Specific Relief Act permits the plaintiff who has not claimed any such relief contemplated by Clause (a) or (b) of sub-section (1) of [Section 22](#) to amend the plaint for including a claim for such relief. The amendment can be sought at any stage of the proceeding and if the Plaintiff moves for such an amendment, the Court is bound to allow him to do so, of course on such terms as may be just.

9. The term "proceeding" is a very wide and comprehensive term and it includes execution proceeding also. The expression "at any stage of the proceeding" gives widest permission to the Court to allow amendment at any stage of the proceeding including execution of the decree. The amendment can be allowed even in an appeal arising out of the order passed by the executing Court rejecting the prayer for permission. The proviso recognises the well settled position that the Court passing a decree

for specific performance retains control over the subject matter as long as anything remains to be done in the case.

In the Duke of Buccleugh, (1892) P.201 Fry LJ observed as follows:

"I base my decision upon the words at any stage of the proceeding'. It has been argued that the rules do' not apply after final judgment. They apply, in my opinion, as long as anything remains to be done in the case."

These observations were quoted by a learned single Judge of the Delhi High Court in M/s. Ex-service men [Enterprises \(P\) Ltd. v. Sumey Singh](#), AIR 1976 Delhi 56. In that case relying on the decision of the Allahabad High Court in [Rameshwar Nath V. U. P. Union Bank](#), AIR 1956 All 586, it was held that the word "proceeding" is a very comprehensive term meaning generally a prescribed course of action for enforcing a legal right and the expression "at any stage" in its literal and actual meaning means without limitation either in frequency or duration or length of time. I am in agreement with this view.

10. In this view of the matter the application filed by the petitioner for amendment of the plaint will have to be granted, even though such an amendment was not necessary.

In view of the above position of law, prayer for amendment of plaint will have to be granted.

5 To non suit the Applicant, who has succeeded in both the Courts, only on the ground of lack of the specific prayer in the facts of the present case will result in injustice and cure such injustice, a specific prayer can always be permitted to be incorporated.

6 In these circumstances, the Civil Application is required to be allowed and is accordingly allowed in terms of prayer clauses (c) and (d). Amendments to be carried out before the next date. In the Appeal, if records and proceedings have not been called, they be called for forthwith. As far as the merits of the amendments carried out, it is open to the Respondent in the Civil Application, the Appellant to advance such contentions as may be permissible in law. Appeal to stand over to 19 June 2017. Ad-interim order to continue.

(N.M. Jamdar, J.)