

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD**

**WRIT PETITION NO. 10537 OF 2018**

Krushna Ramdas Patil and another                      ..    Petitioners

**Versus**

Sham Mohanlal Agrawal                                              ..    Respondent

Shri Girish S. Rane, Advocate for the Petitioner.

**CORAM : S. V. GANGAPURWALA, J.**

**DATE : 21TH SEPTEMBER, 2018.**

**FINAL ORDER :**

.        The respondent/plaintiff has filed suit for specific performance of contract. After the parties have adduced the evidence, the plaintiff has filed an application for amendment thereby seeking relief of possession. The said application is allowed. Aggrieved thereby present petition.

2.        Mr. Rane, the learned counsel for petitioners submits that, though two learned Single Judges of this Court in a case of Lalchand Sheetalsing Pardeshi died through heirs and legal representatives Ashabai Lalchand Pardeshi and others Vs. Ramkrishna Kashinath Jadhav and others reported in 2003(4) Mh. L. J. 119 and in a case of Shashikant Jagannath Powar Vs. Baburao Huvappa Kurhade

through Lrs and others reported in *2013(2) Mh. L. J. 699* have held that dehors the proviso to Rule 17 of Order 6 of the Code of Civil Procedure amendment seeking relief of possession can be made at any stage of the suit is permissible, still the learned Single Judges of this Court in afore referred judgments have not considered that, the non-obstante clause appearing at the beginning of Sec. 22 of the Specific Relief Act is applicable only to Clause 1 and not to clause 2. Clause 2 permits the Court to allow the amendment at any stage. The non-obstante clause is absent in Sub Section 2 of Sec. 22 of the Specific Relief Act. This aspect is not considered in the said judgment.

3. Section 22 of the Specific Relief Act is part of substantive law. Sec. 22 Sub Section 2 of the Specific Relief Act permits the Court to allow amendment at any stage of the proceedings to amend the plaint on such terms as may be just for including a claim for such relief.

4. In fact after the suit for specific performance is decreed, it is not necessary for the plaintiff to file execution. He has to maintain application U/Sec. 28 of the Specific Relief Act and as per Sub Section 3 of Section 28 of the Specific Relief Act, he can claim the relief of possession. Sub Section 4 of Section 28 of the Specific Relief Act specifically provides that no separate suit in respect of any relief which may be claimed under this section shall lie at the instance of a vendor, purchaser, lessor or lessee,

meaning thereby the application has to be in the same suit.

5. Considering aforesaid conspectus of the matter and the two judgments of this Court (supra), the Trial Court has not committed any error in passing the impugned order. The writ petition as such is dismissed. No costs.

**[S. V. GANGAPURWALA, J.]**

*bsb / Sept. 18*

Bhalchandra  
Sudhakar  
Bodke

Digitally signed  
by Bhalchandra  
Sudhakar Bodke  
Date:  
2018.09.26  
10:15:26 +0530