

Vidya Amin

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION No. 3749 OF 2014

ACG Associates Capsules Pvt. Ltd. & Anr. ... Petitioners

Vs.

M/s. Sigma Constructions & Ors. ... Respondents

Mr. Darshan Mehta a/w. Ms. Sarah Thanawala i/b. M/s. Dhruve Liladhar & Co., Advocate for the petitioners.

Mr. Harpreet Singh i/b. Yashavita Apte, Advocate for respondent nos. 6 and 7.

CORAM: **MRS.MRIDULA BHATKAR, J.**

DATE: **7th August, 2018.**

P.C.:

This Writ Petition is directed against the order dated 10th February, 2014 passed by the learned Judge of the City Civil Court, Greater Mumbai dismissing the Chamber Summons No. 1587 of 2010 in S.C. Suit No. 7476 of 1982. The petitioners/plaintiffs have taken out Chamber Summons for amendment of the plaint under Order 6 Rule 17 of the Code of Civil Procedure. The plaintiffs have filed the Suit for specific performance against defendant nos. 1 to 8. Defendant nos. 4 and 5 are no more. Defendant nos. 6 and 7, who are owners, have entered into Agreement for Sale with defendant nos. 1 to 3 on 23rd January, 1979 and the present petitioners/plaintiffs have entered into an Agreement in respect of same suit land with defendants on 11th August, 1980. The suit for specific performance

was filed in the year 1983. The plaintiffs have moved an Application for amendment on 8th October, 2010. The issues were framed on 27th March, 2001 and affidavit-in-chief was filed by the plaintiffs on 7th July, 2003.

2. The learned counsel for the petitioners/plaintiffs has submitted that original defendant nos. 1 to 3, i.e., first purchasers of suit land have filed the Suit No. 1399 of 1981 against original defendants/land owners, however, the said suit was dismissed by the High Court on 8th September, 2000 and therefore, defendant nos. 2 and 3 from whom the present plaintiffs have purchased the land have informed that they are not in a position to perform part of their contract. Further, the said orders were taken up before the Division Bench of the High Court by filing Letters Patent Appeal and thereafter before the Supreme Court, who finally dismissed the matter on 26th October, 2007. The learned counsel has further submitted that the plaintiffs found it necessary to bring all these developments and the orders passed in all these proceedings on record to show that it was a collusive inaction and so the suit be dismissed resulting frustration of the contract for which the petitioners/plaintiffs seek specific performance. The learned counsel submitted that there is a delay.

Earlier, the plaintiffs were not aware of the orders passed in the proceedings, as the petitioners/plaintiffs were not party to those proceedings. However, the learned Judge of the City Civil Court has not taken into account the nature of the suit and also the grievance made by the plaintiffs by way of amendment. He submitted that the plaintiffs also has prayed the increased amount of damages that should also be allowed.

3. The learned counsel for respondent nos. 6 and 7/original owners, while opposing this Writ Petition has submitted that the petitioners/plaintiffs have not come with clean hands that they had no knowledge of the orders passed in the High Court and Supreme Court proceedings of Suit No. 1399 of 1981. He has submitted that the plaintiffs were fully aware of the dismissal of the suit and the orders passed in further proceedings. There is no good and sufficient cause put up by the plaintiffs to explain delay. The plaintiffs are not diligent in taking out this Application. He submitted that these amendments are not necessary in the Suit. Moreover, the amendments in respect of the orders passed by the High Court and Supreme Court also cannot form part of the pleadings.

4. Perused the impugned order, plaint so also the schedule of the Chamber Summons where the amendments sought are mentioned. The plaintiffs are not allowed to plead amendment in respect of history of the proceedings and the orders passed therein in the High Court and Supreme Court and therefore, are not binding upon the plaintiffs and such relief cannot be asked for. However, the amendment whether the plaintiffs have claimed about the fraud, collusion and further damages is allowed, as it is a suit for specific performance. The amendment mentioned in paragraphs 7A, 8A, 9B, 15A and prayer clause d(ii) and (vi) are allowed with cost of Rs.40,000/- which is to be paid to the respondents within three weeks. It is made clear that the amendment mentioned in paragraphs 9A, 9C, 14A, 14B, 14C and prayer clause d(i) are not allowed. Amendment to be carried out within two weeks. The trial Court to expedite the matter.

5. Writ Petition is partly allowed.

(MRIDULA BHATKAR, J.)