

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.3763 OF 2018

Nikhil Vinayak Neverekar ... Petitioner
Vs.
Ashok Sanghvi ... Respondent

Mr. Sandeep Ghogre i/b. Mr. Sanket Shinde for Petitioner.
Mr. Bhavik Manek i/b. Mr. Sharad B. Wakchoure for Respondent.

CORAM : R. G. KETKAR, J.
DATE : JUNE 18, 2018

P.C. :

Heard Mr. Ghogre, learned Counsel for the petitioner and Mr. Manek, learned Counsel for the respondent at length.

2. By this Petition under Article 227 of the Constitution of India, petitioner has challenged the judgment and order dated 18.12.2017 passed by the learned Judge, Court Room No. 12 of the Small Causes Court at Mumbai below exhibit-28 in R.A.N. Application No.14 of 2013. By that order, the learned trial Judge rejected the application made by the petitioner, hereinafter referred to as 'applicant', for amending the Standard Rent Application.

3. Rule. Mr. Wakchoure waives service for the respondent. Having regard to the narrow controversy raised in this Petition and at the request and by consent of the parties, Rule is made returnable forthwith and the Petition is taken up for final hearing.

4. In support of this Petition, Mr. Ghogre invited my attention to the application filed by the petitioner for amending the standard rent

application. He submitted that respondent was impleaded as under:

- “1. Ashok Sanghvi
Prop. of M/s. Sanghavi Realty P. Ltd.
Having their office at No.1
Purushottam Building, “C” Wing,
Tribhuvandas Road, Mumbai-400004”

5. By the proposed amendment, petitioner has sought leave to amend so as to implead M/s. Sanghavi Realty Pvt. Ltd. and Mr. Ashok Sanghvi as its Director. He submitted that no prejudice will be caused to the respondent as the proposed amendment is purely of a technical nature. He submitted that Mr. Ashok Sanghvi was wrongly described as proprietor of M/s. Sanghavi Realty Pvt. Ltd. in the original application instead of Director of M/s. Sanghavi Realty Pvt. Ltd. The learned trial Judge was not justified in rejecting the application.

6. On the other hand, Mr. Manek supported the impugned order. He submitted that by the proposed amendment, the petitioner wants to implead company through Shri Ashok Sanghvi as Director. No notice was issued to the company. Even the company is not impleaded through its Director Ashok Sanghvi as respondent. Apart from that, he submitted that during the course of cross-examination of the petitioner (which is going on since last 7 months and the last date of cross-examination was in November 2017), the proposed application was made, which is also clearly time-barred. He also invited my attention to the affidavit filed on behalf of the respondent. Mr. Manek relied upon the following decisions to contend that this is not a case of mis-description but a case of substitution of altogether new defendant:

- a. ***Jammu and Kashmir Bank Limited Vs. Ghulam Rasul Naqishbandi*, AIR 1958 J & K 20**, and in particular paragraphs 3 and 6 to 8;
- b. ***Ramprasad Dagaduram Vs. Vijaykumar Motilal Hirakhanwala*, AIR 1967 SC 278**, and in particular paragraphs 4 to 9;

- c. ***Kisan Co-operative Sugar Factory Limited Vs. Rajendra Paper Mills*, AIR 1984 All 143**, and in particular paragraphs 9, 12, 20, 21, 25 and 26; and
- d. ***Ganesh Patwari Vs. Talla Venkata Ramana Reddy*, 2000 (1) A.P.L.J. 421 (HC)**, and in particular paragraph 22.

6. I have considered the rival submissions advanced by the learned Counsel appearing for the parties. I have also perused the material on record. It is not in dispute that M/s. Sanghavi Realty Private Limited is a landlord and owner of the premises in question. It is also not in dispute that Ashok Sanghvi is one of the Directors of M/s. Sanghavi Realty Private Limited. I have already extracted the cause title of the Standard Rent Application. In my opinion, the proposed amendment is purely of a technical nature. The learned trial Judge was not justified in rejecting the application. In the case of ***Abdul Rehman Vs. Mohd. Ruldu*, (2012) 11 SCC 341**, the Apex Court has observed in paragraph 13 as under,

“13.Next, we have to see whether the proposed amendments would alter the claim/cause of action of the plaintiffs. In view of the same, we verified the averments in the unamended plaint. As rightly pointed out by Ms. Manmeet Arora, learned counsel for the appellants that the entire factual matrix for the relief sought for under the proposed amendment had already been set out in the unamended plaint. **We are satisfied that the challenge to the voidness of those sale deeds was implicit in the factual matrix set out in the unamended plaint and, therefore, the relief of cancellation of sale deeds as sought by the amendment does not change the nature of the suit as alleged. It is settled law that if necessary factual basis for amendment is already contained in the plaint, the relief sought on the said basis would not change the nature of the suit.** In view of the same, the contrary view expressed by the trial court and the High Court cannot be sustained. It is not in dispute that the relief sought by way of amendment by the appellants could also be claimed by them by way of a separate suit on the date of filing of the application. Considering the date of the sale deeds and the date on which the application was filed for amendment on the plaint, we are satisfied that the reliefs claimed are not barred in law and no prejudice should (sic

would) have been caused to Respondents 13 (Defendants 13 therein) if the amendments were allowed and would in fact avoid multiplicity of litigation.

(emphasis supplied)”

7. It is well settled law that if necessary factual basis for amendment is already contained in the plaint, the relief sought on the said basis would not change nature of the suit as noted earlier. Making clear and explicit what was already implicit in the plaint will not change the nature of the suit. All amendments which are necessary for the purpose of determining real questions in controversy between the parties should be allowed if it does not change basic nature of the suit. On facts, as noted earlier instead of describing capacity of Ashok Sanghvi as 'Director', he is described as 'Proprietor'. Thus, it was implicit in factual matrix set out in unamended plaint and the proposed amendment does not change nature of the suit.

8. If at all, the respondent had any objections in respect of the proposed amendment, the learned trial Judge should have kept all those objections open for determination in the trial. At this juncture, it is relevant to note Section 21 of the Limitation Act, 1963, which reads thus,

“21. Effect of substituting or adding new plaintiff or defendant-

(1) Where after the institution of a suit, a new plaintiff or, defendant is substituted or added, the suit shall, as regards him, be deemed to have been instituted when he was so made a party:

Provided that where the court is satisfied that the omission to include a new plaintiff or defendant was due to a mistake made in good faith it may direct that the suit as regards such plaintiff or defendant shall be deemed to have been instituted on any earlier date.

(2) Nothing in sub-section (1) shall apply to a case where a party is added or substituted owing to assignment or devolution of any interest during the pendency of a suit or

where a plaintiff is made a defendant or a defendant is made a plaintiff. (2) Nothing in sub-section (1) shall apply to a case where a party is added or substituted owing to assignment or devolution of any interest during the pendency of a suit or where a plaintiff is made a defendant or a defendant is made a plaintiff.”

9. A perusal of the above extracted provision shows that proviso thereto lays down that where the Court is satisfied that the omission to include a new plaintiff or defendant was due to a mistake made in good faith it may direct that the suit as regards such plaintiff or defendant shall be deemed to have been instituted on any earlier date. In the case of ***Karuppaswamy Vs. C. Ramamurthy***, AIR 1993 SC 2324, the Apex Court has considered this aspect. In the present case, whether the applicant committed mistake in good faith in impleading Ashok Sanghvi in capacity of proprietor of M/s. Sanghavi Realty Private Limited is a matter of evidence. In my opinion, the learned trial Judge ought to have allowed application for amendment keeping all the objections of the respondent to be decided at the time of the trial.

10. Mr. Manek relied upon - (i) **Jammu and Kashmir Bank Limited** (*supra*), (ii) **Ramprasad Dagaduram** (*supra*), (iii) **Kisan Co-operative Sugar Factory Limited** (*supra*) and (iv) **Ganesh Patwari** (*supra*) to contend that this is not a case of mis-description but a case of substitution of altogether new defendant. For the reasons recorded earlier, I do not find any merit in his submission. The decisions relied by Mr. Manek do not advance his case.

11. Keeping all contentions of the respondent open, application for amendment is allowed. The petitioner shall carry out the amendment in the main application within 14 days from today and shall serve amended application on the other side. Respondent shall file additional written statement restricting to amendment within two weeks of service of the

amended application. While deciding the application finally, the learned trial Judge will decide all the objections of the respondent indicated hereinabove as also any other objections. The trial Court shall frame additional issue on the basis of the proposed amendment and permit parties to lead evidence in that regard. Rule is made absolute in the aforesaid terms with no order as to costs.

(R. G. KETKAR, J.)

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