

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition (ST) NO. 18246 OF 2018

Chitta Finlease Pvt. Ltd.

...Petitioner

Versus

The Baug-E-Sara Residents Welfare Associations,
And Ors

...Respondents

....

Mr. G.S. Godbole, Senior Advocate i/b. Divya Shah Associates, for the
Petitioner.

Mr. Anuj Desai a/w. Vrushali Kabare i/b. Harish Joshi & Co. for
Respondents No.1 and 3 to 14.

Ms. Nisha Shah, Advocate i/b. Kalpesh Joshi Asso. for Respondent No.2.

....

CORAM : R. G. KETKAR, J.

DATE : 03rd AUGUST, 2018

P.C.

1. Heard Mr.G.S. Godbole, learned Senior Counsel for the
petitioner, Mr. Anuj Desai, learned Counsel for respondents No.1 & 3 to
14 and Ms. Nisha Shah, learned Counsel for respondent No.2, at length.
Mr. Godbole seeks leave to delete respondents No.15 to 18. Leave
granted. Amendment shall be carried out forthwith.

2. By this Petition under Article 227 of the Constitution of India,
the petitioner, hereinafter referred to as 'defendant No.5', has
challenged the judgment and order dated 2.2.2018 passed by the
learned Judge, Court Room No.19 of the Court of Small Causes at
Mumbai below Exhibit-56 in R.A.D. Suit No.1209/2016. By that order,
the learned trial Judge allowed the application taken out by the

plaintiffs under Order VI Rule 17 of the Code of Civil Procedure, 1908 (for short, 'C.P.C.') for amending the plaint in terms of the Schedule of proposed amendment.

3. Rule. Learned Counsel for the respective respondents waive service. Having regard to the narrow controversy raised in this Petition as also at the request and by consent of the parties, Rule is made returnable forthwith and the petition is taken up for final hearing.

4. The matter was heard at length on 20.7.2018 and is listed today. The matter was adjourned so as to enable the learned Counsel appearing for the respondents to take instructions as to whether they are ready and willing for deletion of the following portion of the proposed amendment in paragraph-5A:

“In the circumstances the Plaintiff Nos.3 to 8 and 13 are Purchasers of part share in the title of the Suit Property have thus become co-owners of the Suit Property. The Plaintiffs state that in such capacity the Plaintiff Nos.3 to 8 and 13 are opposed to the Defendants taking any action in respect of the Suit Property without their specific consent in respect of the same.”

5. Mr. Desai, on instructions, states that the plaintiffs are ready and willing to delete above portion from paragraph-5A of the Schedule of proposed amendment. Ms. Shah, learned Counsel appearing for Respondent No.2/orig. Plaintiff No.2 has no objection for the same.

6. In view thereof, the petition is disposed of in following terms:

- [i] The sentences quoted hereinabove shall stand deleted from paragraph-5A of the Schedule of proposed amendment. The plaintiffs shall not incorporate the above sentences in the amended plaint. The plaintiffs shall delete the aforesaid portion within two weeks from today.
- [ii] Subject to above rest of the amendment in terms of paragraph-5A is allowed.
- [iii] The defendants shall file additional written statement in respect of the amended plaint only within four weeks from today and serve copy during this period on the other side.
- [iv] The impugned order stands modified accordingly.
- [v] Rule is made absolute in aforesaid terms with no order as to costs.

7. All concerned parties, including the trial Court, shall act upon the authenticated copy of this order. Order accordingly.

(R. G. KETKAR, J.)

Deshmane (PS)

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by Pradipkumar
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Date: 2018.08.06
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