

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.9864 OF 2015

Selvel Publicity & Consultants Pvt. Ltd. .. Petitioner

V/s.

The Municipal Corporation of Gr.Mumbai
and Ors. ... Respondents

Mr.Kiran Jain a/w Ms.Neeta Solanki i/b M/s.Kiran Jain & Co. for the
petitioner

Mr.Pradip Patil for the respondent nos.1 to 4

CORAM: K.K. TATED, J.
DATED : MAY 2, 2018

P.C. :

1 Heard.

2 By this Petitioner, under Article 226 of the Constitution of India, Petitioner is challenging the order dated 29.07.2015 passed by learned Bombay City Civil Court, Mumbai in Chamber Summons No.468 of 2015 in L.C.Suit No.2686 of 2013 rejecting Petitioner original plaintiff's Application for carrying out amendment in plaint in view of subsequent development.

3 In the present proceeding, initially the Petitioner plaintiff filed

L.C.Suit No.2686 of 2013 before the Bombay City Civil Court, Mumbai for declaration and injunction in respect of hoarding with following prayers:

“(a) That this Hon'ble court be pleased to order and direct the BMC to allow the Plaintiffs to continue to display the advertisement on the suit hoarding admeasuring 30' x 20' situated on the footpath near Wilson College, N.A.Purandare Road, Mumbai, and the notice dated 6/5/2013 issued by Defendant No.4 bearing Ref. No.ACD/35727/Lic. And the order dated 10/7/2013 of Defendant No.2 bearing Ref. No. SL/OD/33/LAD be set aside and be declared as null, void, bad in law, misconceived and illegal;

(b) that the Defendants, their servants and agents and anybody representing the Defendants be restrained by a permanent order and injunction of this Hon'ble court in any manner removing or demolishing the suit hoarding admeasuring 30' x 20' situated on the footpath near Wilson College, N.A.Purandare Road, Mumbai;

(c) that the Defendants be ordered and directed to continue to accept the permit fees and licence fees from the Plaintiffs with regard to the suit hoarding and renew the permit from time to time;

(d) that pending the hearing and final disposal of the suit the Defendants, their servants and agents and anybody representing the Defendants be restrained by an order and injunction of this Hon'ble court in any manner removing or demolishing the suit hoarding admeasuring 30' x 20' situated on the footpath near Wilson College, N.A.Purandare Road, Mumbai, and / or acting on the basis of notice dated 6/5/2013 issued by Defendant No.4 bearing Ref. No.ACD/35727/Lic. and the order dated 10/7/2013 of Defendant No.2 bearing Ref. No.SL/OD/33/LAD with regard to the suit hoarding in any manner of whatsoever nature and / or the said injunction order be granted on such terms and conditions as deemed fit

and proper by this Hon'ble Court;

(e) that interim and ad interim reliefs in terms of prayer (d) above be granted;

(f) that cost of the suit be provided for;

(g) that such further and other reliefs as the nature and circumstances of the case may require be granted.”

4 During the pendency of the said Suit, Respondent Corporation executed notice dated 06.05.2013 and order dated 10.07.2013 by removing hoarding in the month of December, 2014 for want of restraining order from the competent court. Thereafter, Petitioner filed Chamber Summons No.468 of 2015 in the month of March, 2015 for carrying out amendment in plaint as under:

“SCHEDULE OF THE PROPOSED AMENDMENT

I) Following to be added after Para 35 of the Plaint as paras 35A, 35B, 35C, 35D, 35E :-

35A. The plaintiffs submits that during pendency of Notice of Motion in the aforesaid suit. The defendants have damaged the suit hoarding without following due process of law and without giving a intimation to the plaintiffs. The Plaintiffs are approaching this Hon'ble court and seeking prayer and relief in the suit to restore the damaged suit hoarding in its original position and carry out necessary modifications and repair in the suit hoarding damaged on 22/12/2014. Therefore, necessary relief and permission may be granted to the Plaintiffs to carry out the said work accordingly.

35B. That in the event if the Plaintiffs are not permitted to restore Suit Hoarding in its original position, grave injustice and prejudice would be caused to the Plaintiffs. The Plaintiffs

are entitled to repair the premises. The Plaintiffs are entitled to use the suit premises for display of Advertisement on the hoarding structure.

35C. The Plaintiffs submit that they are conducting Hoarding business since from year 1945 and plaintiffs have acquired their reputation all over India and customers which has been clearly dented due to the conduct of the Defendants.

35D. In the aforesaid circumstances, the Plaintiffs state and submit that defendants are liable to compensate the Plaintiffs for the same. The act of the defendants are dishonest and wrong and which is to the knowledge of the defendants that matter is sub judice before this Hon'ble Court then also the defendants had taken a such drastic action. The Plaintiffs submit that they are entitled to a Judgment and decree of Rs.99,00,000/- against the defendants with interest at the rate of 18% per annum or at such other rate of interest as deemed fit and proper by this Hon'ble Court from the date of filing of suit till payment or realization.

35E. The Plaintiffs submit that they have suffered loss of reputation, goodwill business and profits due to dishonest and malafide conduct of the defendants. The plaintiffs are entitled for damages from Defendants and they are claiming Rs.99,00,000/- a particular and details of the said damages are explained in detail in particulars of claim a copy whereof is herewith annexed and marked Exhibit "R".

II) Following prayer clauses be added as prayer (ai) and (a ii) to the Plaint:-

(ai) that the Plaintiffs be permitted to restore and carry out repairs damaged suit hoarding in its original position viz. Hoarding 30' x 20' situated on the footpath near Wilson College, N.A.Purandare Road, Mumbai damaged by the defendants without notice and intimation on 22/12/2014.

(a ii) this Hon'ble Court be pleased to pass a judgement and decree in favour of the plaintiffs and

against the Defendants for a sum of Rs.99,00,000/- as and by way of damages as per plaintiffs particulars of claim being Exhibit "R" annexed hereto together with interest thereon @ 18% per annum or at such further and other rate of interest as this Hon'ble Court may deem fit and proper from the date of filing of the suit till payment and/or realization."

5 That Chamber Summons was rejected by the Trial Court on the ground that in view of subsequent development, plaintiff cannot be allowed to amend the plaint for claiming damages. Hence, the present Writ Petition.

6 The learned counsel for the Petitioner submits that order dated 29.07.2015 passed by Trial Court is required to be set aside on the ground that Trial Court failed to consider the fact that they filed Chamber Summons No.468 of 2015 for bringing on record subsequent development i.e. removal of hoarding and also damages of their reputation because of action taken by Respondent Corporation. He submits that there is no question of changing entire nature of Suit in view of subsequent development by way of amendment. In support of this contention, he relies on judgment of the Apex Court in the matter of *Rajesh Kumar Aggarwal and Others vs. K.K. Modi and Others, (2006) 4 SCC 385*, judgment of Apex Court in the matter of *Ragu Thilak D. John vs. S. Rayappan and others, (2001) 2 SCC 472*, and judgment of this court in the matter of *Mudra Salt and Chemical Industries vs. Collector, Thane and others, (2001) 3 Mh. L.J. 151* and judgment of Apex Court in the matter of *M.C.Agrawal HUF v. M/s.Sahara India & Ors. AIR 2008 SC 2887*.

7 On the basis of these authorities and submissions, the learned counsel for the Petitioner submits that in the interest of justice, this Hon'ble Court be pleased to set aside the impugned order dated 29.07.2015 passed by Trial Court and allow the Chamber Summons No.468 of 2015 for carrying out amendment in L.C.Suit No.2686 of 2013 in view of subsequent development.

8 On the other hand the learned counsel for the Respondent Corporation vehemently opposed the present Writ Petition. He submits that in the present proceedings, Respondent Corporation initially issued notice dated 6.5.2013 calling upon the Petitioner plaintiff to remove the hoarding admeasuring 30' x 20' situated on the footpath near Wilson College, N.A.Purandare Road, Mumbai and thereafter passed order to that effect dated 10.07.2013 bearing reference No.SL/OD/33/LAD. He submits that though the plaintiff filed Suit on 18.07.2013 they failed and neglected to press for ad-interim relief in their favour. Hence, defendant executed their notice dated 06.05.2013 as well as order dated 10.07.2013 in the month of December 2014 by removing the said hoarding. Thereafter plaintiff filed Chamber Summons in the month of March, 2015 for carrying out amendment. He submits that by the said Chamber Summons, the plaintiff made application for additional prayer i.e. damages to the tune of Rs.99,00,000/- also. He submits that initially the plaintiff filed Suit only for declaration and injunction in respect of said hoarding and subsequently by way of amendment he wanted to convert the said Suit for damages.

9 Considering these facts, Trial Court rightly rejected the plaintiffs Chamber Summons. Therefore, there is no question of allowing the present Writ Petition.

10 Heard both the sides at length. It is to be noted that there is no dispute that initially the plaintiff filed suit only for declaration and injunction in respect of hoarding. Said hoarding was removed by Respondent Corporation during the pendency of the present Suit itself for want of order in favour of plaintiff. Thereafter plaintiff filed Application for carrying out amendment in plaint in view of subsequent development. By the said amendment, plaintiff claimed damages to the tune of Rs.99,00,000/- also. To that effect, he prayed to allow the plaintiff to add paragraph 35D and 35E and also prayer clause a(ii) in the plaint. These paragraphs are in respect of damages which is altogether different cause of action to the original suit.

11 The authority cited by the plaintiff's advocate in respect of ***Rajesh Kumar Aggarwal and Others vs. K.K. Modi and Others*** (Supra) held that court should allow all amendments that may be necessary for determining the real question in controversy between the parties. In the present case, the plaintiff filed Suit for injunction and subsequently he wanted to convert the same for damages. Hence, same is not applicable in the present facts and circumstances of the case in hand.

12 In similar way, other authorities cited by the plaintiff in respect of

Ragu Thilak D. John vs. S. Rayappan and others, Mudra Salt and Chemical Industries vs. Collector, Thane and others and M.C.Agrawal HUF v. M/s.Sahara India & Ors. (Supra) are not applicable. In all these matters, Supreme Court as well as High Court held that amendment can be allowed if it is necessary to decide the real issue involved in the matter. In the case in hand, the real issue is whether plaintiff is entitled injunction restraining the Respondent Corporation from acting as per notice dated 06.05.2013 and order dated 10.07.2013. On the basis of original Suit, there is no question of claiming any damages. Therefore, same cannot be allowed by way of amendment. But Petitioner plaintiff can be allowed to carry out partly amendment as per Chamber Summons No.468 of 2015 particularly as per clause 35A, 35B, 35C and prayer clause a(i) which reads thus:

“35A. The plaintiffs submits that during pendency of Notice of Motion in the aforesaid suit. The defendants have damaged the suit hoarding without following due process of law and without giving a intimation to the plaintiffs. The Plaintiffs are approaching this Hon'ble court and seeking prayer and relief in the suit to restore the damaged suit hoarding in its original position and carry out necessary modifications and repair in the suit hoarding damaged on 22/12/2014. Therefore, necessary relief and permission may be granted to the Plaintiffs to carry out the said work accordingly.

35B. That in the event if the Plaintiffs are not permitted to restore Suit Hoarding in its original position, grave injustice and prejudice would be caused to the Plaintiffs. The Plaintiffs are entitled to repair the premises. The Plaintiffs are entitled to use the suit premises for display of Advertisement on the hoarding structure.

35C. The Plaintiffs submit that they are conducting

Hoarding business since from year 1945 and plaintiffs have acquired their reputation all over India and customers which has been clearly dented due to the conduct of the Defendants.

(ai) that the Plaintiffs be permitted to restore and carry out repairs damaged suit hoarding in its original position viz. Hoarding 30' x 20' situated on the footpath near Wilson College, N.A.Purandare Road, Mumbai damaged by the defendants without notice and intimation on 22/12/2014.”

13 Hence, following order is passed:

- a) Writ Petition is partly allowed.
- b) Plaintiff is permitted to carry out amendment as per Chamber Summons No.468 of 2015 in L.C.Suit No.2686 of 2013 by adding paragraph nos.35A, 35B, 35C and prayer clause a(i) as reproduced hereinabove.
- c) Amendment be carried out within four weeks from today.
- d) If amendment is not carried out within stipulated time as stated hereinabove, Chamber Summons shall stand dismissed without referring back to the court.
- e) If amendment is carried out within stipulated time as stated hereinabove, Petitioner to serve amended copy of plaint on Respondent immediately thereafter within two weeks.
- f) Liberty granted to the Respondent Corporation to file their

additional written statement if any within 12 weeks from receipt of amended copy of plaint with copy to other side.

(K.K. TATED, J.)