

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO. 883 OF 2018**

M/s Kanaka Infratech Ltd., A Company registered under the Indian Companies Act, 1956, having its registered office at F-26/27, Ravi Complex, Valia Cross Road, GIDC, Ankleshwar, District Bharuch, Gujarat 393 002 and through its Managing Director, Shri Jaykrishna Shetty, son of Annayya Narayan Shetty, major of age, married and having branch office at T-3 John Paul Building, Church Square, Panaji.

.... Petitioner

Versus

1. M/s Economic Development Corporation Ltd., A Company registered under the Indian Companies Act, 1956, with its registered office at 1st floor, EDC house, Dr. Atmaram Borkar Road, Panaji, Goa.
2. M/s Rahul Deshpande & Associated, having their office at ST-8, Sapana Paradise, Tembawadi, Meces, Ilhas, Goa. Respondents

Mr. Arjun Naik, Advocate for the Petitioner.

Mr. D.J. Pangam with Mr. P. Sawant, Advocates for the Respondent No. 1.

Mr. Luis Fernandes, Advocate for the Respondent No. 2.

CORAM : C.V. BHADANG, J.**DATE : 5th February, 2019.****ORAL JUDGMENT:**

Rule made returnable forthwith. Advocate Pangam, waives service for the respondent no. 1 and Advocate Fernandes, waives service for the respondent no. 2. Heard

finally by consent of parties.

2. By this petition, the petitioner (original plaintiff) is challenging the order dated 03.07.2018, passed by the learned Senior Civil Judge, below Exhibit D-43. By the impugned order, the application for amendment of the plaint filed by the petitioner has been dismissed.

3. Undisputedly, the said application seeking amendment of the plaint was filed prior to the commencement of the trial, as such, the proviso to Order VI, Rule 17 of Civil Procedure Code (Code, for short) is not attracted.

4. The petitioner has filed a suit against the respondents for specific performance of the contract awarded to the petitioner by the respondent no. 2 for improvement of the infrastructure at Patto, Panaji, Goa. The petitioner is also seeking mandatory injunction against the respondents.

5. The petitioner filed an application (Exhibit D-43) for amendment, seeking introduction of para 36(a) to 36(f) in the plaint, as set out in para 4 of the application for amendment.

6. The application was opposed on behalf of the respondents, on the ground that the application is filed in order to delay the suit and that the proposed amendment is not necessary for deciding the matter in dispute. It is contended that the facts which are now sought to be introduced are also not subsequent events and the petitioner was aware of these facts much prior thereto.

7. The learned Trial Court has held that the amendment being based on subsequent facts “which otherwise needs to be granted”. However, the learned Trial Court has also held that the petitioner has concealed that these facts are already brought on record. In the opinion of the learned Trial Court once the defendant no. 1 has already brought these facts on record, more particularly, about awarding the contract to one M/s M. Ventatrao Infrastructure, after the termination of the contract of the petitioner, it is not necessary for the petitioner to bring the subsequent facts on record again.

8. I have heard Mr. Naik, the learned Counsel for the petitioner, Mr. Pangam, the learned Counsel for the respondent no. 1 and Mr. Fernandes, the learned Counsel for the respondent no. 2. With the assistance of the learned Counsel

for the parties, I have gone through the record.

9. It is submitted by Mr. Naik, the learned Counsel for the petitioner that the amendment is formal in nature and in any event, the subsequent fact of awarding of the contract to M/s M. Ventatrao Infrastructure, after the termination of the contract with the petitioner, has already come on record and as such, no prejudice will be caused to the respondents, if the amendment is allowed. The learned Counsel has placed reliance on the decision of the Supreme Court in the case of **Pankaja & Another Vs. Yellappa (D) and Others (2004) 6 SCC 415**, in order to submit that the dominant purpose of allowing the amendment is to minimize the litigation and it is always open to the Court to allow amendment, although, if there is some delay. It is thus submitted that the Trial Court was in error in dismissing the application.

10. Mr. Pangam, the learned Counsel for the respondent no. 1, on the contrary, has supported the impugned order. It is submitted that the subsequent facts, which are now sought to be introduced, are much prior to the filing of the amendment application. The learned Counsel for the respondent no. 1 has pointed out that the second respondent has filed Special Civil

Suit No. 34/2013/A, against the petitioner, in which, the petitioner has raised a counterclaim and in that counterclaim the petitioner has pleaded the facts, which are now sought to be introduced. He therefore submits that the amendment is superfluous and not necessary.

11. I have considered the circumstances and the submissions made. It is now well settled that the Court is required to allow all such amendments, which are necessary for deciding the real controversy in dispute. This is the first jurisdictional fact, which the Court has to find. Insofar as the amendment sought after the commencement of the trial is concerned, there is yet another requirement of compliance with proviso to Order VI, Rule 17 of the Code. The present application having been filed prior to the commencement of the trial, the proviso is not attracted.

12. I have carefully gone through the proposed amendment, by which, addition of para 36(a) to 36(f) to the plaint are sought and I find that they are predominantly based on grant of contract to M/s M. Ventatrao Infrastructure after termination of the contract with the petitioner. The learned Trial Court has noticed in the opening part of para 4 of the

impugned order that normally in such cases, the amendment has to be allowed. As noticed earlier, these are not new facts, by which, the respondents are being taken by surprise, as the facts are already incorporated by the petitioner in the written statement/counter claim in Special Civil Suit No. 34/2013/A, pending before the learned Senior Civil Judge.

13. The Hon'ble Supreme Court in the case of **Pankaja** (supra) has held that the dominant purpose of allowing the amendment is to minimize the litigation and it is always open to allow the application, inspite of delay and laches in seeking such amendment. Considering the overall circumstances, I find that the amendment needs to be granted.

14. In the result the following order is passed:

O R D E R

- (i) The petition is allowed.
- (ii) The impugned order is hereby set aside.
- (iii) The application (Exhibit D-43) filed by the petitioner is hereby allowed.
- (iv) The amendment to be carried out within two weeks.
- (v) Needless to mention that the respondents would be entitled to file additional written statement and/or to carry out consequential

amendment to the written statement.

- (vi) Rule is made absolute in the aforesaid terms,
with no order as to costs.

C. V. BHADANG, J.

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