

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO. 1215 OF 2018**

Ponda Municipal Council, Thr. its
Chief Officer, Navnath Naik Petitioner
Versus
Nitin Madhukar Khandolkar Respondent

Mr. Gaurish N. Agni, Advocate for the Petitioner.

Mr. Luis Fernandes, Advocate for the Respondent.

CORAM : C.V. BHADANG, J.

DATE : 16th SEPTEMBER, 2019

ORAL ORDER:

The challenge in this Petition is to the order dated 01.09.2018 (below Exhibit D-74), passed by the learned Civil Judge Junior Division at Ponda, in Regular Civil Suit No. 63/2009/B. By the impugned order, the learned Trial Court has allowed application (Exhibit D-74), for amendment of the plaint, filed by the respondent.

2. The brief facts are that the respondent has filed the aforesaid suit against the petitioner for permanent injunction, restraining the petitioner or anybody on its behalf from evicting the respondent in pursuance of the final notice cum order dated 06.07.2009 and 07.08.2009, without following due procedure of law and causing demolition of the suit premises.

3. The respondent filed an application for amendment of the plaint seeking addition of paras 41(j) to 41(o) and addition of prayer clause a1. In short, according to the respondent, in pursuance of a communication dated 17.12.2007 from the petitioner, the respondent had handed over the vacant possession of the suit shop to the petitioner. It was contended that a promise was held out by the petitioner to temporarily accommodate the respondent and further to allot a shop in the newly constructed premises on lease basis. It was contended that in partial compliance of the said promise, new shop premises being shop nos. G-23 and G-67 were allotted to the respondent. However, the petitioner has failed to execute the lease deed in favour of the respondent in respect of the said shop premises. It was in these circumstances that the amendment was sought with an additional prayer clause a1, for a direction to the petitioner to execute lease deed in favour of the respondent, as promised in the communication dated 17.12.2007.

4. The petitioner filed a reply and opposed the application on various grounds, including that the proposed amendment changes the nature of the suit and in particular, the prayer for a direction to execute the lease deed in favour of

the respondent, is barred by limitation.

5. The learned Trial Court by the impugned order has allowed the application *inter alia* holding that the objection in respect of limitation can be considered at the final stage of the suit. The learned Trial Court has refused to accept that the proposed amendment changes the nature of the suit or the cause of action.

6. I have heard Mr. Agni, the learned Counsel for the petitioner and Mr. Fernandes, the learned Counsel for the respondent. With the assistance of the learned Counsel for the parties, I have gone through the record.

7. Mr. Agni, the learned Counsel for the petitioner has submitted that the proposed amendment is not based on any subsequent events, as claimed on behalf of the respondent. For this purpose, the learned Counsel has taken me through the application for amendment, in order to submit that the proposed amendment, which is essentially based on the alleged promise held out in the letter dated 17.12.2007, is much prior to the filing of the suit in the year 2009. It is submitted that the suit as originally filed, is simpliciter for injunction,

restraining the petitioner from evicting the respondent, otherwise than in due course of law and from demolishing the suit premises. The learned Counsel has pointed out that both these prayers, do not survive, in as much as the respondent has surrendered the possession and the construction of the new shopping complex has been completed. It is next submitted that the prayer, in the nature of specific performance for execution of the lease deed, entirely changes the nature of the suit, which is not permissible. For this purpose, the learned Counsel has extensively taken me through the pleadings in the plaint.

8. Mr. Fernandes, the learned Counsel for the respondent has supported the impugned order. It is submitted that the respondent has surrendered the possession as well as the petitioner has been allotted new shop premises being shop nos. G-23 and G-67, to the respondent, subsequent to the filing of the suit and as such, the amendment is clearly based on the events, which are subsequent to the filing of the suit. It is submitted that the petitioner has already filed an additional written statement to the amended plaint and that the proposed amendment is only consequential and does not change the nature of the suit.

9. I have carefully considered the rival circumstances and the submissions made. It appears that although, the suit was initially filed simpliciter for injunction, the respondent has surrendered possession of their suit premises subsequent to the filing of the suit and the petitioner has allotted the shop premises being shop nos. G-23 and G-67 to the respondent and both these events are subsequent to the filing of the suit. *Prima facie*, it appears that the amendment arises out of these subsequent events. It was strenuously urged on behalf of the petitioner that there was no subsisting lease in favour of the respondent when the suit was filed, much less when he had surrendered the possession. I am afraid, this issue cannot be gone into at this stage. It is evident that the merits of the amendment cannot be gone into at this stage. Insofar as the issue as to whether, the proposed amendment and the prayer clause a1 is barred by limitation, the learned Trial Court has rightly left this issue open to be gone into at the trial. I have carefully gone through the impugned order and I do not find that it suffers from any infirmity, so as to require interference. The petition is without any merit and is accordingly dismissed with no order as to costs. Needless to mention that the issue as to whether, the proposed amendment relates back to the

date of filing of the suit and even if, it relates back to the date of filing of the suit, whether, the relief sought as per the amended prayer clause is within limitation or not, is left open to be decided at the trial of the suit.

C. V. BHADANG, J.

EV