

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.1281 OF 2017

Rukminibai Purushottam Gajul

...Petitioner

vs.

Ambaji Narasayya Sita

...Respondent

Mr. Shrishail Sakhare, for the Petitioner

None for the Respondent

CORAM : M. S. SONAK, J.

DATE : MARCH 13, 2019

ORAL JUDGMENT

. Heard Mr. Sakhare, learned counsel for the Petitioner. He states that all the Respondent is duly served and affidavit of service has been filed. On 7th February, 2017 this Court made the following order:

"1. Heard Mr.Shrishail Sakhare, learned Counsel for the petitioner.

2. By this Petition under Article 227 of the Constitution of India, the petitioner, hereinafter referred to as the 'plaintiff, has challenged the judgment and order dated 16.3.2016 passed by the learned 12th Jt. Civil Judge, Junior Division, Solapur below Exhibit 21 in R.C.S. No.1100/2013. By that order, the learned trial Judge rejected the application made by the plaintiff under Order VI Rule 17 of C.P.C. for amending the plaint.

3. Mr. Sakhare submitted that the plaintiff has instituted suit inter alia for specific performance of the contract as

also for perpetual injunction restraining the defendant from creating third party interest. The defendant filed written statement dated 21.6.2014 resisting the suit. In paragraph 4, the defendant contended that she had executed sale deed in respect of the suit property. He submitted that the defendant however did not give details / particulars in respect of the sale transactions referred in paragraph 4 of the written statement. The plaintiff filed application Exhibit 15 on 16.10.2014 calling upon the defendant to give the particulars. By order dated 1.8.2015, the learned trial Judge rejected the application on the ground that considering the nature of the suit, the defendant cannot be compelled to furnish details as prayed in the application. He submitted that during the course of his cross examination, the plaintiff deposed that he is not aware of transaction dated 6.6.1997.

4. The plaintiff, therefore, filed application on 22.1.2016 for amending the plaint. By the impugned order, the learned trial Judge has rejected the application. He states that the next date of hearing before the trial Court is 27.2.2017 for recording of evidence.

5. In view thereof, issue notice to the respondent returnable on 7.3.2017. Till next date there shall be ad-interim order in terms of prayer clause (c).

6. Parties are put to notice that subject to time constraint and the convenience of the Court, Petition will be disposed of finally on that date at the stage of admission. Notice shall further indicate that despite service, if the respondent fails to appear, the Court will proceed to decide the Petition on its own merits.”

2. From the aforesaid it is quite clear that the parties were put to notice that this Petition will be disposed of finally at the stage of admission. In the meanwhile, an ad-interim order was also made in terms of prayer clause (c).

3. The challenge in this Petition as noted earlier is to the order dated 16th March, 2016 by which the learned trial Judge has dismissed the Petitioner's application seeking leave to amend the Plaint. The only reason in the impugned order is that the case is fixed for evidence of the Plaintiff and there was no explanation of due diligence. Therefore relying upon the proviso Order VI Rule 17 of Code of Civil Procedure, the learned trial Judge has dismissed the Petitioner's application below Exhibit 21.

4. In the present case, the Petitioner has filed suit seeking relief of specific performance. In response, the Defendant in written statement stated that they have already sold a suit property to some third party. However, no details of the third party or details of the sale deed were disclosed in the written statement. The Petitioner thereafter made specific application (Exhibit 15) on 16th October, 2014 calling upon the Defendants to give particulars. However, such application, came to be rejected by the learned trial Judge on 1st August, 2015. Thereafter, when the cross examination of the Petitioner commenced, certain questions were posed to the Petitioner with regard to transfer of the suit property in favour of the Lilavati Gore, Vishwanath Soma and Sayanna Soma. It is the

case of the Petitioner that at this stage, the Petitioner was made aware of the details of the subsequent transferee.

5. Taking into consideration, the aforesaid which is really not contested by any of the Respondents, despite service, it cannot be said that there was not serious lack of diligence on the part of the Petitioner. In fact the Petitioner makes efforts to secure the details but the Defendants to the suit neither furnished such details nor they cooperated with the Petitioner in finding out such details.

6. For the aforesaid reasons, the impugned order is liable to be set aside and the Petitioner's application (Exhibit 21) seeking leave to amend the Complaint under Order VI Rule 17 is liable to be allowed.

7. Accordingly, the impugned order is set aside and the Petitioner's application (Exhibit 21) is hereby allowed.

9. Necessary amendment to be carried out within four weeks from the date of this order is uploaded on the web site. Copy of the amended Complaint to be furnished not only to the Respondent but also to the newly impleaded parties.

10. The learned trial Judge to issue summons to newly impleaded parties and thereafter grant opportunity to defend the suit.

11. Rule is made absolute in the aforesaid terms.

12. There shall be no order as to cost.

13. All concerned to act on the basis of authenticated copy of this order.

(M. S. SONAK, J.)