

BDP-SPS

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 1346 OF 2019**

Shri Sunil Balkrishna Koli Petitioner.

V/s

Sou. Abida Aurang Sadule Respondent.

Mr. Chetan G. Patil for the Petitioner.

Mr. Nagesh Y. Chavan for the Respondent.

CORAM: NITIN W. SAMBRE, J.

DATE: OCTOBER 14, 2019

P.C.:-

1] The impugned order is passed in exercise of powers under Order VI Rule 17, thereby granting amendment to the plaint. The amendment, prima facie appears to have been allowed in the backdrop of provisions of Section 26 of the Specific Relief Act.

2] While questioning the order impugned, learned Counsel for the Petitioner-Defendant submits that the suit was initiated on 09/06/2011, whereas the amendment which was moved on 05/04/2017 was already rejected and the suit is at the stage of final hearing, as the evidence of the parties is over. According to him, at a

belated stage, application for amendment came to be moved which is not maintainable, particularly having regard to the observations made by the Apex Court which are considered by this Court while deciding Writ Petition No. 4536 of 2015 vide order dated 13th July, 2015. As such, according to him, the order impugned is not sustainable.

3] The learned Counsel appearing on behalf of the Respondent-Plaintiff submits that the suit for specific performance is very much within limitation and the amendment is taken out pursuant to the remedy provided under Section 26 of the Specific Relief Act. That being so, according to him, since the amendment is based on statutory rights, the order impugned is just and proper.

4] Considered the rival submissions.

5] The Respondent-Plaintiff has already made a basis in the application Exhibit-175 for amendment of the Plaint, as to why right under Section 26 of the Specific Relief Act is invoked at a belated stage. The provisions of Section 26 can be invoked in a suit initiated under the provisions of Specific Relief Act, particularly in a case in

hand, which is based on the agreement dated 26/11/2007.

6] Apart from above, if the nature of amendment in the backdrop of the prayer in the plaint is concerned, the same, if granted, does not change the nature of claim in the suit itself. What has been claimed by the Respondent-Plaintiff is an ancillary relief in the light of remedy provided under Section 26 of the Specific Relief Act.

7] In that view of the matter, in my opinion, the claim put-forth is devoid of any merit. As such Petition fails and the same stands dismissed.

8] Needless to observe that it is always open for the Petitioner-Defendant to canvass a plea that the claim under Section 26 of the Act brought in by virtue of amendment is barred by limitation.

(NITIN W. SAMBRE, J.)