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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.3257 OF 2014

Prithvivallab B.Rawat & Anr.	..Petitioners.
V/s.	
M/s. Shah Enterprises & Ors.	..Respondents.

Mr.K.H.Kanojiahan for the petitioners.

Mr.Aureline D'souza i/b. Pravin Mehta & Pritbhi Mehta & Co. for respondent Nos.3 to 6.

Mr.Vachan Bodke i/b. M/s.Chitnis Vaithy & Co. for respondent Nos.9 to 16 & 18 to 20.

CORAM : M.S.SONAK, J.

DATE : MARCH 15, 2019

ORAL JUDGMENT

Heard Mr.Kanojihan, learned counsel for the petitioners, Mr.D'souza, learned counsel for respondent Nos.3 to 6 and Mr.Bodke, learned counsel for respondent Nos.9 to 16 and 18 to 20.

2. Rule. Rule, made returnable forthwith. By consent of the parties, the matter is heard finally and disposed of.

3. On November 3, 2014, this Court passed the following order :-

“1. Heard Shri AG Damle, the learned Senior Counsel

appearing for the Petitioners. At the outset the learned Senior Counsel for the Petitioners Shri Damle, on instructions of the Petitioner No.2, states that the Chamber Summons as well as the above Writ Petition is not being pressed insofar as the Respondent No.23 to the above Petition i.e. JMD Advertisers is concerned as no cause of action now survives against the Respondent No.23 in view of the supervening event of Respondent No.23 removing the hoarding from the site in question. In view of the said statement the Respondent No.23 to be deleted from the array of the Respondents.

2. Issue notice to the Respondents except Respondent Nos. 9 to 16 and 18 to 20 returnable on 25/11/2014. In addition to service of notice through Court, the advocate for the Petitioners shall serve a private notice by Registered Post A.D. and/or by Courier service and/or by hand delivery on the said Respondents and shall file affidavit of service before the returnable date. The learned counsel appearing for the Respondent Nos.9 to 16 and 18 to 20 Shri Vachan Bobade waives notice on behalf of the said Respondents.

3. Since the issue is as regards whether the Plaintiff would be entitled to amend the plaint in terms of the amendment sought vide Chamber Summons No.334 of 2013, the parties are put to notice that in view of the narrow controversy involved, the above Writ Petition may be heard and disposed of finally at the stage of admission."

4. Mr.Kanojiahan states that the respondents have been served and affidavit of service has been filed. In the aforesaid order

dated November 3, 2014, it is made clear that this petition will be heard finally at the stage of admission.

5. Challenge in this petition is to the order dated October 10, 2013 by which learned trial Judge has rejected the Chamber Summons No.334/2013 seeking amendment of the plaint and impleadment of the parties.

6. Record indicates that S.C.Suit No.8817/1994 was instituted by the petitioners (original plaintiffs) against namely, respondent No.1 with whom the petitioners had a development agreement. It is the case of the petitioners that respondent No.1, in breach of the terms of the agreement has constructed some extra floors and further created third party rights in the premises. By taking out chamber summons No. 334/2013, the petitioners seek leave to place on record the third party rights created by respondent No.1 and also to implead the parties in whose favour the said right has been created. This amendment was applied for at the stage prior to framing of the issues. Even otherwise, since the said suit relates to the year 1994, the proviso to order 6 Rule 17 of the Civil Procedure Code will really not apply. Ordinarily, therefore, the chamber summons was required to be allowed.

7. Mr.Bodke appearing for some of the respondents, however, points out that respondent No.1 way back in 1994 had disclosed the names of the parties in whose favour, third party rights were created.

He submits that if the amendment is allowed at this belated stage, the valuable rights created in favour of such third party, by virtue of law of limitation, will be taken away. He submits that if the amendment is allowed, the effect is likely to relate to the date of institution of the suit. He submits that there is really no explanation for the gross delay in taking out the chamber summons. Mr.Bodke submits that for these reasons, the impugned order need not be interfered with.

8. At this stage, it is not possible to go into the issue of bar of limitation. However, it can be made very clear that though the leave to amend is granted, the same is subject to the objections on the basis of law of limitation. This clarification will, to a great extent take care of the apprehension expressed by Mr.Bodke, learned counsel for some of the respondents.

9. The amendment relates to certain events that have transpired during the pendency of the suit. Some of the amendments relate to the events which may have transpired even much before the suit. However, the issues in the suit are yet to be framed. The issue of limitation can be left open. Taking into consideration all these circumstances, the impugned order dated October 22, 2013 is set aside and the chamber summons No.334/2013 seeking leave to amend / include parties is hereby allowed.

10. However, the issue of limitation is expressly kept open. This

means that the newly impleaded parties also will be entitled to raise the issue of limitation and if such an issue is raised, then, such issue will have to be decided by learned trial Judge along with the other issues at the time of deciding the suit on its own merits.

11. The petitioners will have to pay the costs of Rs.5,000/- each, to the respondents, who are represented by Mr.Bodke and Mr.D'silva, which means that the total cost of Rs.10,000/- will have to be paid to these two sets of respondents, since the other respondents neither appeared nor were represented in this petition. The costs be paid within a period of four weeks from today. The amendment to be carried out within a period of four weeks from today.

12. Rule is accordingly made absolute in the aforesaid terms and in accordance with the clarification as aforesaid.

13. The copies of the amended plaint be served upon the defendants in the suit. Thereafter, the trial Court to issue notice to the newly impleaded defendants and grant them suitable time to file their written statements.

14. All contentions are kept open.

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

(M.S.SONAK, J.)