

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 2757 OF 2017

Rajendra C. Singh

.. Petitioner

vs.

M/s. Lodha Developers Pvt. Ltd. (Deleted)

M/s. Cowtown Land Development

Pvt. Ltd. and ors.

.. Respondents

Mr. Amogh Singh I/b. Mr. Jeet Gandhi for the Petitioner.

Mr. Vineet Naik, Sr. Counsel a/w. Mr. Rahul D. and Ms Prachi Dhanani I/b Veritas Legal for Respondent No.1.

CORAM : M. S. SONAK, J.

DATE : 20 MARCH 2019.

ORAL JUDGMENT :-

1] Mr. Amog Singh, learned counsel for the petitioner and Mr. Vineet Naik, learned Senior Advocate a/w. Ms Prachi Dhanani for respondent No.1.

2] Rule. Rule is made returnable forthwith, with the consent of and at the request of learned counsel for the parties.

3] The challenge in this petition is to the order dated 11th January 2017 by which learned Trial Judge has rejected the petitioner's application at Exhibit-52 seeking leave to amend the plaint.

4] Mr. Amogh Singh, learned counsel for the petitioner, submits that leave to amend was applied at a stage prior to commencement of the trial. He submits that initially, the petitioner had pleaded that he is in possession of the suit property and sought for injunction against the respondents. However, temporary injunction was declined as a consequence of which respondent No.1 have put up the construction on the suit property. He submits that on account of these subsequent developments, the amendment to the plaint was necessary and the same should not have been rejected.

5] Mr. Vineet Naik, learned Senior Advocate for respondent No.1, points out that the conduct of the petitioner is such as undeserving of any relief in the exercise of jurisdiction under Article 226 of the Constitution of India. Mr. Naik points out that the petitioner is only interested in procrastination. He submits that the petitioner failed to remain present in the miscellaneous appeal to challenge the refusal of injunction by learned Trial Court. He points out that even the application at Exhibit-52 was not argued by the

petitioner or his advocate despite grant of several opportunities. Mr. Naik submits that the petitioner is bent upon prolonging the litigation and harassing respondent No.1.

6] Mr. Naik further submits that if proposed amendment is allowed will fundamentally change the nature of the suit. He submits that serious prejudice will occasion respondent No.1, if leave to amend is granted. He submits that the suit was instituted in the year 2012 and the trial in the suit is already delayed for the reasons entirely attributable to the petitioner. Mr. Naik also points out that the reason why the application for temporary injunction was rejected by the Trial Court and such rejection was confirmed by the Appeal Court was that construction of three building was already complete. Mr. Naik therefore, submits that this is not a case of a subsequent event as contended by learned counsel for the petitioner.

7] The rival contentions now fall for determination.

8] This is a case of pre-trial amendment. No doubt, the issues were framed but the trial in the suit was yet to commence. Therefore, the proviso to Order 6 Rule 17 of CPC will really not apply.

9] From the perusal of the application and in particular, the schedule of amendment, it cannot be said that any fundamental change in the nature of the suit is proposed. In the plaint, as originally filed, the petitioner's claims certain right and interests in respect of suit property. The plaintiff had also claimed that he is in possession of the suit property. Now that injunction has been declined to the petitioner and constructions have come up on the suit property, the petitioner, by way of amendment, seeks additional reliefs in relation to the constructions which have come up. At this stage, it is not possible to go into the issue as to whether there is any merit in the averments which the petitioner proposes to add by way of amendment or the reliefs which the petitioner proposes to seek by way of amendment. That is a matter which will have to be decided on its own merits upon trial. However, it cannot be said that the proposed

amendment fundamentally altered the nature of the suit and therefore, leave to amend should not be granted.

10] Insofar as the conduct of the petitioner is concerned, the records, at least *prima facie*, indicate that the petitioner has not quite vigilant. Since the suit was instituted in the year 2012, no doubt, some prejudice is bound to occasion respondent No.1. However, this prejudice, can be compensated by way of costs. On account of this prejudice, it is not as if the petitioner should not be allowed to amend his own plaint as proposed.

11] Accordingly, the impugned order is hereby set aside. The petitioner is granted leave to amend as prayed for at Exhibit-52. However, such leave is subject to the petitioner paying costs of Rs.25,000/- to respondent No.1 within a period of two weeks from the date of this order is uploaded on the website. The payment such costs shall be condition precedent. If such costs either are not paid or deposited in the Trial Court within two weeks from the date of this order is uploaded, then this petition shall be deemed to have been

dismissed without any further reference to this Court but with costs of Rs.25,000/-. If the amount is deposited before the Trial Court, respondent No.1 will have unconditional leave to withdraw the said amount.

12] Amendment to be carried out within four weeks from today. A copy of the amended plaint to be furnished to the respondents, and the respondents will have liberty to file additional written statement within four weeks from the date of receipt of amended copy of the plaint.

13] The learned Trial Judge is directed to dispose of the suit expeditiously.

14] Rule is made absolute to the aforesaid extent.

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

(M. S. SONAK, J.)