

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION  
WRIT PETITION NO. 5014 OF 2016  
WITH  
WRIT PETITION NO. 5078 OF 2016

Dayanand J. Gharat

.. Petitioner

vs.

M/s. Mehar Associates  
and ors.

.. Respondents

Mr. Sandesh Patil a/w. Ms Divya A. Pawar I/b Ms Anusha P. Amin for the Petitioner.

Mr. Rohit Sakhadeo for Respondent Nos.11 and 12 in WP 5078/16.

Mr. S.B. Shetye for Respondent No.13.

Mr. G.R. Dalvi I/b Beerta Bajwa for Respondent Nos.1 to 3.

Ms Aparna Shinde for Respondent Nos.4 to 10

**CORAM : M. S. SONAK, J.**

**DATE : 30 APRIL 2019.**

**ORAL JUDGMENT:**

1] Heard learned counsel for the parties.

2] Learned counsel for the parties agree that both these petitions can be disposed of by common judgment and order.

3] Accordingly, Rule in both petitions. Rule is made returnable forthwith in both petitions, with the consent of and at the request of learned counsel for the parties.

4] The challenge in Writ Petition No. 5014 of 2016 is to the order dated 15<sup>th</sup> March 2016 by which learned Trial Judge has dismissed the petitioner's application at Exhibit-78 seeking leave to amend the plaint.

5] The main reason why the leave to amend has declined is because, according to the learned Trial Judge, the amendment will change the nature of the suit.

6] The suit, as originally instituted, sought a declaration in respect of the agreement between the petitioner/plaintiff and defendant Nos. 1 to 3. By the amendment, the petitioner seeks *inter alia* in the alternate relief of specific performance. Because, it is the case of the petitioner that even otherwise defendant Nos.1 to 3 failed to perform the terms and conditions of the agreement in respect of declaration is sought for. By the amendment, the petitioner also urges that in case the Court comes to the conclusion that the petitioner has lost the possession of the suit property, then such possession may be restored to the petitioner.

7] The suit is basically concerned with the agreement in respect of suit property between the petitioner and defendant Nos.1 to 3. Several disputes have arisen in the context of such agreement and therefore, the suit came to be instituted. After the amendment is permitted, the fundamental nature of the suit will not undergo any change and therefore, this was not a proper ground on which leave to amend could have been declined, particularly since leave to amend was applied for prior to commencement of trial in the suit.

8] Ms Aparna Shinde, learned counsel for respondent Nos. 4 to 10, submits that the petitioner must be called upon to withdraw the original suit and thereafter to file a comprehensive suit, if he so desires but he cannot be permitted to amend the plaint. If a comprehensive suit can be filed, there is no reason as to why the suit, which is already filed, is converted into a comprehensive suit by permitting leave to amend. In fact, by granting leave to amend multiplicity of proceedings will be prevented.

9] Amendments, which are applied for prior to the commencement of the trial, have to be liberally construed. This is not at all a case of fundamental change in the nature of suit. The basic cause of action remains the same. Only, alternate reliefs or additional reliefs had been applied for. Certain matters are being elaborated. There was no good reason to deny leave to amend.

10] Accordingly, the impugned order dated 15<sup>th</sup> March 2016 is liable to be set aside and the petitioner's application at Exhibit-78 is liable to be allowed, subject to payment of costs of Rs.5000/- in favour of all the defendants. The petitioner is at liberty to deposit this costs and the defendants to the suit are at liberty to withdraw the costs on *pro rata* basis.

11] Rule is accordingly, made absolute in Writ Petition No. 5014 of 2016. The costs to be deposited within six weeks from today and amendment to be carried out within a period of two weeks thereafter.

12] Copy of the amended plaint to be served upon all the defendants and the defendants are granted liberty to file additional written statement within six weeks from the date of receipt of copy of the amended plaint.

13] In Writ Petition No. 5078 of 2016, the challenge is to the order dated 19<sup>th</sup> January 2016, by which, respondent No.13 in the present petition has been ordered to be impleaded as defendant.

14] According to me, there is no jurisdictional error in the impugned order, because it is the case of respondent No.13 that the suit property has been transferred to respondent No.13 by means of registered document. Now, that the leave is granted to the plaintiff to amend the plaint and to seek comprehensive relief in the suit, it is only appropriate that respondent No.13 is also made a party to the suit so that, all the issues in relation to the suit property can be sorted out in one and the same proceedings. Since, there is no jurisdictional error, there is no case made out to interfere with the impugned order by exercising supervisory

jurisdiction under Article 226 of the Constitution of India.

15] Accordingly, Rule is discharged in Writ Petition No. 5078 of 2016. There shall be no order as to costs.

16] All concerned to act upon an authenticated copy of this order.

**(M. S. SONAK, J.)**