

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.6433 OF 2017

Balu Sopana Kale & Anr. ... Petitioners
Vs.
Vikram Mohanlal Nahar ... Respondent

.....
Mr. Vilas B. Tapkir for the Petitioners.
Mr. T.D. Deshmukh for respondent.

CORAM : M. S. KARNIK, J.

DATE : 17th SEPTEMBER, 2019.

P. C.:

1. Heard learned counsel for the petitioners.
2. The petitioners are the original defendants. The present respondent had initially filed a suit for recovery of earnest money and damages. Relief for specific performance was not prayed as the acquisition proceedings had commenced. However, during the pendency of the suit it came to the notice of the plaintiff that the acquisition proceedings are dropped. In the plaint, the plaintiff had reserved his liberty to seek specific performance if need arises.

3. When the plaintiff realised that the acquisition proceedings are dropped by Maharashtra Industrial Development Corporation, he filed an application for amendment under Order VI Rule 17 of the Code of Civil Procedure below Exhibit 27. The Trial Court allowed the application by the impugned order. This was admittedly pre-trial amendment allowed by the Trial Court.

4. Learned counsel for the petitioners would submit that by allowing this amendment the nature of the suit has undergone complete change. He would submit that initially the suit was filed for recovery of earnest money and damages. According to him, the plaintiff had given up his right to seek specific performance. Learned counsel would submit that even plaintiff wants to seek specific performance, the remedy cannot now be by way of an amendment which would factually amount to change the nature of the suit. Learned counsel for the petitioners points out that there is no recent development in as much as he has only received the notice for receiving compensation.

5. I have gone through the order passed by the Trial Court allowing the application for amendment. The plaintiff could not file a suit for specific performance as the acquisition proceedings were initiated. Later on when he came to know that the proceedings are dropped, the suit is sought to be amended by filing the application for specific performance. This in view of the averments made in the plaint that plaintiff reserved his right of specific performance at a later stage if necessary. I have gone through the reasons recorded by the Trial Court. I do not see any reason to interfere with the order passed by the Trial Court.

6. In the event the acquisition proceedings are continuing or again commenced, it is always open for the defendants to take appropriate plea in the written statement filed to the amended plaint. I am informed that the written statement has already been filed to the amended plaint. I see no reason to interfere with the order passed by the Trial Court.

7. The petitioners are always at liberty to bring the subsequent developments on record before the Trial Court, which the Trial Court can consider on its own merits.

8. The petition is rejected with no order as to costs.

(M. S. KARNIK, J.)