

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.1083 OF 2019**

Kollapuram Verghese

.. Petitioner

Versus

Ganesh Vishal Infra Engineering Pvt. Ltd.

.. Respondent

**WITH
WRIT PETITION NO.1084 OF 2019
WITH
WRIT PETITION NO.1085 OF 2019
WITH
WRIT PETITION NO.1086 OF 2019
WITH
WRIT PETITION NO.1087 OF 2019
WITH
WRIT PETITION NO.1088 OF 2019
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WRIT PETITION NO.1089 OF 2019
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WRIT PETITION NO.1090 OF 2019
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WRIT PETITION NO.1091 OF 2019
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WRIT PETITION NO.1092 OF 2019
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WRIT PETITION NO.1093 OF 2019
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WRIT PETITION NO.1094 OF 2019**

WITH
WRIT PETITION NO.1095 OF 2019
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WRIT PETITION NO.1096 OF 2019
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WRIT PETITION NO.1097 OF 2019
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WRIT PETITION NO.1098 OF 2019
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WRIT PETITION NO.1105 OF 2019
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WRIT PETITION NO.1106 OF 2016
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WRIT PETITION NO.1107 OF 2019
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WRIT PETITION NO.1108 OF 2019
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WRIT PETITION NO.1110 OF 2019
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WRIT PETITION NO.1111 OF 2019
WITH
WRIT PETITION NO.1112 OF 2019
WITH
WRIT PETITION NO.1113 OF 2019
WITH
WRIT PETITION NO.1135 OF 2019

Mr. D.S. Sakhalkar I/b Ms. Nutan S. Moily for petitioner in all the petitions.

Mr. Viral Shukla a/w Ms. Heena Jewani I/b Shukla & Associates for respondent in all the petitions

CORAM : K.K. TATED, J.

DATE : 28 JANUARY 2019.

P.C:-

. Heard learned Counsel for the parties.

2. Learned Counsel for the petitioner submits that all these matters are arising from an order passed by City Civil Court allowing respondent/original plaintiff's Chamber Summons for carrying out amendment in the plaint as well as in pending Notice of Motion. Hence, all these writ petitions to be heard together with. By consent of both the parties, all these matters are taken for final hearing together.

3. For the sake of convenience, facts are given in writ petition No.1083 of 2019 in Chamber Summons No.389 of 2018 in Notice of Motion No.237 of 2018 in S.C. Suit No.3156 of 2017.

4. By these writ petitions under Article 227 of the Constitution of India, petitioner/original defendant is challenging the order dated 05.12.2018 passed by the Bombay City Civil Court at Bombay allowing respondent/original plaintiff's Chamber Summons for carrying out amendment in the plaint as well as in pending Notice of Motion.

5. In the present proceedings, the respondent/original plaintiff has filed Special Civil Suit for declaration, possession injunction and other consequential reliefs under Section 5 read with Sections 7, 34 and 38 of the Specific Relief Act, 1963 read with Section 9 of the Civil Procedure Code, 1908. In that suit plaintiff has made following prayers :

“(a) This Hon'ble Court be pleased to declare by an Order and Decree that the Defendant has no right, title and interest in the suit property i.e. Shop No.8, Ground Floor, Dalvi Plaza, Om Nagar, J. B. Nagar, Andheri (East), Mumbai - 400 059 and as more particularly described in Schedule of Property marked as Exhibit-'A' to the plaint and as more particularly demarked in the schematic plan marked as Exhibit 'B' to the plaint;

(b) This Hon'ble Court be pleased to pass an Order and Decree directing Defendant to hand peaceful and vacant possession of the suit property i.e. Shop No.8, Ground Floor, Dalvi Plaza, Om Nagar, J.B.

Andheri (East). Mumbai - 400 059 and as more particularly described in Schedule of Property marked as Exhibit 'A' to the plaint and as more particularly demarked in the schematic plan marked as Exhibit 'B' to the plaint to the Plaintiff;

(c) This Hon'ble Court be pleased to pass an Order and Decree against the Defendant to pay to the Plaintiff mesne profit at the rate of Rs.60,000/- (Rupees Sixty Thousand only) per month from March 2017 till the date of handing over possession of the suit premises; for sum of Rs.3,66,133/- being proportionate compensation towards all out going from date of filing of suit till date of handing over possession of suit premises as per particular of claim marked as Exhibit 'K'.

(d) This Hon'ble Court be pleased to permanently restrain the Defendant by an Order and Decree of injunction from dealing with, any or creating any third party right, title and/or interest of whatsoever nature in respect of the suit property i.e. Shop No.8, Ground Floor, Dalvi Plaza, Om Nagar, J.B. Nagar, Andheri (East), Mumbai - 400 059 and as more particularly described in Schedule of Property marked as Exhibit 'A' to the plaint and as more particularly demarked in the schematic plan marked as Exhibit 'B' to the plaint;

(e) Pending the hearing and final disposal of the present suit the Defendant this Hon'ble Court be pleased to direct the Defendant to pay interim mesne profit at the rate of Rs.60,000/- (Rupees Sixty Thousand only) per month from March 2017 till the date of handing over possession of the suit property and sum of Rs.3,66,133/- (Rupees Three Lakhs Sixty Six Thousand One Hundred Thirty Three only) per annum as

per particular of claim marked as Exhibit 'K' of the plaint.

(f) Pending the hearing and final disposal of the present suit this Hon'ble Court be pleased to pass a temporary order of injunction restraining the Defendant from dealing with, any or creating any third party right, title and/or interest of whatsoever nature in respect of the suit property i.e. Shop No.8, Ground Floor, Dalvi Plaza, Om Nagar, J.B. Nagar, Andheri (East), Mumbai - 400 059 and as more particularly described in Schedule of Property marked as Exhibit 'A' to the plaint and as more particularly demarked in the schematic plan marked as Exhibit 'B' to the plaint;

(g) Ad interim and Interim reliefs in terms of prayer clause (e) and (f) as aforesaid be granted for;

(h) Costs and professional costs of the suit be provided for;

(i) Such other and further reliefs as this Hon'ble Court deems fit and proper be granted for;"

6. During the pendency of the suit and the Notice of Motion, the plaintiff preferred Chamber Summons for carrying out amendment to place on record the subsequent development that the building is in dilapidated condition and is required to be demolished and for that purpose they require possession of the suit premises which is in possession of the petitioner/original defendant.

7. Considering these facts, the trial Court passed the impugned order dated 05.12.2018 and permitted plaintiff to carry

out appropriate amendment.

8. Learned Counsel appearing on behalf of petitioner/original defendant submits that the trial Court erred in coming to the conclusion that the respondent/original plaintiff has made out case for permitting them to carry out amendment in the plaint and in pending Notice of Motion. He submits that initially, the plaintiff has not made any prayer for possession of suit premises during the pendency of the matter on the ground of dilapidated condition of the building. He submits that by carrying out amendment in the plaint, plaintiff wants to change the entire structure of the suit which is not permitted under law. He further submits that if amendment is permitted, irreparable loss and injury will cause to the defendants. On the basis of these submissions, the learned Counsel for the petitioner submits that the impugned order passed by the trial Court is required to be set aside.

9. On the other hand, learned Counsel appearing on behalf of respondent original plaintiff vehemently opposed the present writ petition. He submits that by way of amendment, there is no question of change of entire structure of this suit. He submits that in the original suit also, there was a prayer for possession of the suit premises. Therefore, there is no substance in the present writ petition and same is required to be dismissed with cost.

10. I heard both the sides at length. It is to be noted that in the present proceedings, initially the plaintiff filed a suit for possession and declaration with other reliefs. In view of

subsequent development that is dilapidated condition of the suit structure, plaintiff has made an application for carrying out amendment in the plaint to place on record present facts and in view of those facts possession of the suit premises during the pendency of the suit.

11. Bare reading of the Chamber Summons and the original plaint filed by the respondent/original plaintiff shows that if the amendment is allowed, it is not going to change the entire suit structure at all. These facts are considered by the trial Court at the time of passing the impugned order dated 05.12.2018. Therefore, I am of the opinion that the petitioner/original defendant failed to make out any case to interfere in the impugned order passed by the trial Court. Hence, following order :

- a) All Writ Petitions stands dismissed.
- b) No order as to costs.
- c) Advocate Mr. Viral Shukla for respondents undertakes to file Vakalatnama within two weeks from today. Same is accepted.

(K.K.TATED, J.)