

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO.3244 OF 2016

Jagdish s/o Jhanaklal Choudhari
Sadar Nagpur.
And Ors.

... Petitioners

-vs-

M/s Heera Laxmi Contractors Pvt. Ltd.
Kadbi Chowk, Nagpur
And Anr.

... Respondents

Shri P. A. Abhyankar, Advocate for petitioners.
Shri A. M. Quazi, Advocate for respondent No.1.
Shri S. M. Patrikar, Advocate for respondent No.2.

CORAM : A.S.CHANDURKAR, J.
DATE : June 24, 2019

P.C.

Challenge in the present writ petition is to the order passed by the trial Court below Exhibit-68 allowing the application for amendment as moved by the original plaintiff.

The respondent No.1 firm is the original plaintiff that has filed a suit for specific performance of the agreement dated 01/07/2005. In the plaint it has been pleaded that out of land admeasuring 2H 68R belonging to the predecessor of the original defendant, land admeasuring 1H 68R was agreed to be sold to the plaintiff. Reference has been made to the various payments made from time to time. In paragraph 19 thereof it has been stated that at the instance of the defendants the land agreed to be sold was

restricted to 1H 60R as a result of which the consideration payable was Rs.15,81,200/- and the balance amount payable is stated to be Rs.45,000/-. There is a reference to an acknowledgment dated 20/01/2010. On these pleadings the plaintiff seeks a decree for specific performance. Before commencement of the trial and before the written statement of defendant Nos.2 to 4 could be taken on record, the plaintiff moved an application for amendment below Exhibit-68 in which it was prayed that in the schedule of property the description of the suit property as 1H 68R be corrected to 1H 60R. Similarly, in paragraph 22 of the plaint it was sought to be clarified that in regular practice 1H 60R was taken as 4R and consideration payable would therefore be Rs.16,00,000/-. This application was opposed by the defendant Nos.2 to 4 and by the impugned order the trial Court has allowed the application for amendment by accepting that said corrections deserve to be made.

2. Shri P. A. Abhyankar, learned counsel for the petitioners submitted that by virtue of the proposed amendment, the plaintiff sought to get over various admissions made in the legal notice and in the plaint. According to him the subsequent agreement dated 20/01/2010 was a document not accepted by the defendant Nos.2 to 4 and hence with a view to get over that situation, the plaintiff proposed the amendment in question. According to him, the corrections sought could not be described as typographical errors

and various admissions made by the plaintiff in the legal notice and in the plaint were sought to be retracted by virtue of said amendment. He referred to the exchange of notices as well as the agreement in question to substantiate his point.

3. Shri A. M. Quazi, learned counsel for the respondent No.1 on the other hand submitted that the aforesaid defence that was sought to be put forth by the defendant Nos.2 to 4 is yet to come on record. The application for amendment came to be moved even before the defendant Nos.2 to 4 could deposit costs pursuant to the order passed by the trial Court as a condition for taking their written statement on record. He referred to the agreement dated 20/01/2010 and submitted that no admission whatsoever was being sought to be retracted as urged. The trial Court was justified in allowing the amendment which was in the nature of corrections especially when the trial was yet to commence.

4. Heard the learned counsel for the parties and perused the plaint as well as other documents filed on record. In the application for amendment it has been stated by the plaintiff that in the schedule of property, instead of the figure 1H 68R correction as 1H 60R deserves to be made. Similarly, instead of 0.68R a correction to indicate 1H 08R ought to be made. In paragraph 22 it is sought to be brought on record that the exact

consideration payable was Rs.15,81,200/- but the plaintiff was ready to pay total consideration of Rs.16,00,000/-. It is seen that the application for amendment had been moved expeditiously much before commencement of the trial. In fact though the defendant Nos.2 to 4 were permitted to place their written statement on record as per order dated 24/07/2015, the costs were not deposited as directed by the trial Court. The written statement came to be placed on record but without deposit of the amount of costs. In other words before the written statement of the said defendants could come on record, the application for amendment came to be moved. It is found that the nature of amendment as proposed has been found necessary by the trial Court and it permitted the same in the light of the corrections proposed. It is not seen that any admissions made by the plaintiff are sought to be withdrawn. It is a question of correction of the figures mentioned in the schedule of the property and clarification with regard to the total consideration. I therefore do not find any reason to interfere with the order passed by the trial Court. The defendant Nos.2 to 4 are at liberty to raise appropriate defences by way of consequential amendment. All points in that regard are kept open. In terms of the order dated 30/06/2015 passed in A.O. No.46/2015 the trial Court shall proceed to decide the suit expeditiously on its own merits.

The Writ Petition is thus dismissed. No costs.