

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.1107 OF 2019

1. Mrs. Diona D'Sa Korgaonkar
wife of Dr. Sanjay Korgaonkar,
major of age,
resident of G.M.C. Quarters,
Type V-14 Bambolim,
Tiswadi Goa.

2. Dr. Sanjay P. Korgaonkar
son of Pralahd Korgaonkar
major of age, Indian National
resident of G.M. C. Quarters,
Type V/14
Bambolim, Tiswadi Goa.

... Petitioners

Versus

1. Mrs. Maria Do Carmo Pires
wife of Paulo Romulaldo Pires
resident of Flat No.FF2
Sunil Rachna Co-operative Housing Society
Rego Bagh, Alto St. Cruz
Tiswadi Goa.

2. M/s Umesh Sadanand Real Estate
Developers Pvt. Ltd.,
having its Registered Address at :
212, Rego Bagh, Alto St. Cruz,
Tiswadi Goa.

Represented herein by its Director
Mr. Umesh Sadanand Achrekar
major of age, Indian National,
married
resident of H.No.202/C
Vasudha Colony, Tiswadi Goa.
Alto St. Cruz Goa.

... Respondents

Mr. J. J. Mulgaonkar, Advocate for the Petitioners.
Mr. V. Menezes, Advocate for the Respondent No.1.
Mr. A. D. Bhobe, Advocate for the Respondent No. 2.

Coram : M. S. SONAK, J
Date : 23rd June 2021

ORAL JUDGMENT

Heard Mr. Mulgaonkar, learned counsel for the Petitioners,
Mr. Menezes, learned counsel for the Respondent No.1 and Mr. A. D.
Bhobe, learned counsel for the Respondent No.2.

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

3. The challenge in this petition is to the order dated 12th November 2019 by which the learned Trial Judge has only partly allowed the Petitioners' application seeking leave to amend the plaint. This petition is directed against the portion of the order by which certain paragraphs are not permitted to be added in the plaint.

4. The learned Trial Judge has held that the paragraphs which are referred to in paragraph 6 of the impugned order are not based upon the knowledge of the Petitioners and therefore no leave can be granted to introduce such paragraphs into the plaint. The learned Trial Judge has however permitted the Petitioners to add paragraphs referred to in

paragraph 7 of the impugned order.

5. Mr. Bhobe, learned counsel for Respondent No.2 points out that the Petitioners seek to incorporate certain paragraphs based on the statements allegedly made by the Respondent No.1. He submits that since the Petitioners have no personal knowledge on this aspect, the learned Trial Judge was justified in rejecting the leave to amend.

6. The record bears out that leave to amend was applied for before the trial in the suit commenced. Even assuming that the Petitioners may had personal knowledge of the statements, which the Petitioners now seek to introduce in the pleadings, that, by itself, is not a ground to reject leave to amend the plaint and that too at pre trial stage. In the verification, the Petitioners will have to state the basis on which the pleadings are made. In any case, these are all matters which can be tested at the trial for which, the defendants will have ample opportunity. The fact that leave is granted to amend the pleadings does not even remotely mean the acceptance of veracity or otherwise of such pleadings by the Court.

7. According to me, there was no valid reason for disallowing the amendment. No serious prejudice will also occasion to any of the defendants if such amendments are allowed because all rights and contentions of the defendants are kept intact. At the highest some costs

will have to be paid to the defendants.

8. Accordingly, rule is made absolute in this petition. The impugned order to the extent it denies leave to amend is set aside. The Petitioners' application seeking leave to amend is allowed in its entirety. This shall be subject to the Petitioners paying costs of ₹5000/- to the Respondent No.2 within a period of 15 days from today. The costs may either be directly paid or deposited before the Trial Court within 15 days from today.

9. Necessary amendments to be carried out within one week from the payment/deposit of the costs.

10. It is made clear that all rights and contentions of the defendants are expressly kept open. The defendants will have a right to file additional written statement if they so desire.

11. All concerned to act based on the authenticated copy of this order.

M. S. SONAK, J.

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