

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

WRIT PETITION NO. 6416 OF 2019

**SNEHA
NITIN
CHAVAN**

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Date: 2021.09.06
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Sushila Ramesh Pilani
V/s.

.. Petitioner

Harishchandra Devji Patil and Ors.

..Respondents

Mr. Chaitanya Nikate for the Petitioner.

Mr. Mohan Jadhav for the Respondent Nos. 1 to 4.

CORAM : C.V. BHADANG, J.

DATE : 06 SEPTEMBER, 2021

PC.

1. By this petition, the Petitioner/Plaintiff is challenging the order dated 26 March 2019 (below Exh. 47) passed by the learned Joint Civil Judge, Junior Division, Uran in Regular Civil Suit No. 44 of 2011. By the impugned order, the Application Exh. 47 filed by the Petitioner for amendment of plaint is rejected.

2. I have heard the learned counsel for the parties. Perused record.

3. The aforesaid suit is filed by the Petitioner for specific performance of an agreement for sale dated 16 January 1996. A

perusal of paragraph 11 of the plaint shows that the Petitioner had issued a notice/letter dated 26 December 2006 through M/s. Little and Co. and according to the Petitioner, the defendants represented that suit property was situated within Uran Taluka having included in Special Economic Zone (SEZ) and the matter is taken up with the State Government so as to revoke the notification for such inclusion and once the properties are out of the Special Economic Zone and consequent upon the withdrawal of the acquisition proceedings, the Respondents shall execute the Sale Deed. The Petitioner has further pleaded that the Petitioner relied upon the said representation made by the Defendants and waited for the deletion of the properties from the Special Economic Zone. Subsequently, the Petitioner issued a notice dated 22 March 2011 calling upon the Defendants to execute the Sale Deed within 15 days which was received by the Defendants on 05 April 2011. As the defendants failed to execute the Sale deed, the suit came to be filed on 18 June 2011.

4. The Defendants *inter alia* contend that the suit is barred by limitation, inasmuch as the Petitioner had issued the letter on 26 December 2006 and ought to have filed the suit within the limitation as provided under Section 54 of the Limitation Act from the said date. In short, the defendants place reliance on the letter

dated 26 December 2006 in order to contend that the suit is barred by limitation.

5. The Petitioner filed an application for amendment proposing to amend paragraph 11 and 19 of the plaint. With the assistance of the learned counsel for the parties, I have gone through the proposed amendments. All that the Petitioner wants to introduce is their interpretation of the letter/notice dated 26 December 2006 in respect of which the pleadings are already there in the plaint. By the proposed amendment the petitioner states that even assuming that the said letter of the year 2006 was a notice, the Petitioner could not have initiated the suit unless the defendants were in a position to execute the Sale Deed pending the decision of the State Government on the SEZ and the acquisition of the land. It is submitted on behalf of the Petitioner that the proposed amendment is only of a clarificatory nature thereby amplifying the existing pleadings. The learned counsel submitted that the Petitioners are not proposing to change the nature of the suit, nor the cause of action which according to the Petitioner has accrued on 05 April 2011.

6. The learned counsel for the Petitioner also pointed out that in other suits pending between the parties, similar amendment has been allowed.

7. The learned counsel for the Respondents submitted that by virtue to the proposed amendment, the Petitioner is trying to fill up lacuna, which in my considered view cannot be accepted for the reason that the pleadings in respect of letter/notice dated 26 December 2006 are already there and all that the amendment proposes to do is to clarify/amplify the existing pleadings. The proposed amendment neither changes the nature of the suit nor tries to introduce a new case. The proposed amendment does not take away the defence of the defendants that the suit is barred by limitation. It is not disputed that the trial has not commenced in the suit.

8. In that view of the matter, the petition is allowed. The impugned order is hereby set aside. Application Exh.47 is allowed as prayed. The Petitioner shall carry out the amendment within three weeks from today. Needless to mention that the Respondents shall be entitled to carry out consequential amendment to the

written statement, if any. In the circumstances, there shall be no order as to costs.

C.V. BHADANG, J.