

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

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**INTERIM APPLICATION NO. 2530 OF 2021
IN
COUNTER CLAIM (L) NO. 2793 OF 2005**

Aditya Enterprises and 2 Ors. .. Applicants
v/s.
Mahendra Jayantilal Vora and 2 Ors. .. Respondents.

Mr. Cyrus Ardeshir a/w Mr. Sidharth Samantray i/b Kanga & Co. for the Applicants in IA/2530/2021.

Ms. Deepti Panda, Yatin R. Shah, Shivam Bhagwati for the Respondents in IA/2530/2021.

**CORAM : A. K. MENON, J.
DATED : 6TH DECEMBER, 2021.**

P.C. :

1. By this Interim Application, the defendant who is also the plaintiff to the Counter Claim, seeks amendment to the Counter Claim in terms of schedule annexed at Exhibit B to the Interim Application.
2. The schedule (Exhibit B) to the Interim Application proposes to enhance the amount of money claimed as an alternative, for specific performance. Schedule B also includes a revised statement of particulars

of claim which is annexed as Exhibit A to the Interim Application.

3. The application proceeds on the same basis as the Written Statement and Counter Claim filed by the present applicant. He has already made a claim in prayer clause (d), which claim is in the alternative to prayer clauses (a) and (b). It seeks compensation in lieu of specific performance in a sum of Rs.9,65,95,846/- and interest thereon. It is only this amount that is sought to be enhanced and brought up to date in view of increase in cost of construction and deposits etc. as set out in the particulars of the claim. Hence, the proposal to amend in terms of Schedule B and inclusive of Exhibit A.

4. The application is opposed by Ms. Dipti Panda on behalf of respondents in IA on the ground that the trial has commenced and the plaintiff has closed its evidence. The defendant and plaintiff to Counter Claim has examined two witnesses and it is at this stage that the Counter Claimant is seeking to amend the claim and that is not to be permitted. She relied on the judgment in the case of ***Vidyabai and Ors. V/s. Padmalatha AIR 2009 SC 1433***. Relying upon the ratio of this judgment, she states that it is the duty of the Court to ensure that the amendment is necessary so as to decide the real dispute between the parties and only if such a condition would be fulfilled, the amendment could be allowed. In the present case, she submits that there is no justification in seeking

the amendment and hence the application should be rejected.

5. In my view, having heard learned Counsel for the parties, this is an amendment which would cause no prejudice to the plaintiff since the plaintiff is not facing a mere amendment to a defence, but the plaintiff is now called upon to answer the Counter Claim. Mere enhancement in the quantum of Counter Claim cannot be a reason for opposing this application. The plaintiff having closed evidence will not prejudice the plaintiff's claim. It is for the Defendant/Counter Claimant to lead evidence in support of his claim and change in quantum cannot in any manner cause prejudice to the plaintiff. In any event, the amendment which I propose to allow, will be without prejudice to the plaintiff's contention that the claim to the extent of the enhancement is barred by limitation and that this belated attempt at enhancing the claim is causing prejudice to the plaintiff and causing substantial delay in trial.

6. In view of the above, the amendment is liable to be allowed. Leave can be granted to the plaintiff to file an additional Written Statement to meet the enhanced claim and there would be no occasion to delay the trial. The issues are already framed and it will only be recast to the extent of the quantum of the Counter Claim. Accordingly, I pass the following order;

(i) Interim Application is allowed in terms of prayer clause (a).

- (ii) Amendment to be carried within a period of two weeks from today subject to payment of costs.
- (iii) Additional Written Statement to be filed within one week of amendment being carried out.
- (iv) The applicant to pay cost of Rs.50,000/- to the plaintiffs within two weeks from today as condition precedent. If costs are not paid, this order shall stand vacated.
- (v) Interim Application is disposed.

(A. K. MENON, J.)