

13October, 2022.

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 12077 OF 2022**

Nikhil Ramesh Kulkarni

....Petitioner

V/s.

Sukumar Bhupal Gat and anr.

....Respondents

Mr. Shashank C. Mangle, Advocate for the petitioner.**Mr. M.L. Patil**, Advocate for the respondent no.1.**CORAM : SANDEEP K. SHINDE, J.****CLOSED FOR ORDER ON : 11TH OCTOBER, 2022.****PRONOUNCED ORDER ON : 13TH OCTOBER, 2022.****P.C. :**

1. Heard learned Counsel for the parties.
2. Petitioner-plaintiff instituted suit for specific performance of oral contract, much less, un-concluded contract. The pleadings in the plaint, make reference to Agreement dated 27th February, 2012 which relates to final plot no.2. However, the pleadings indicate, the plaintiff was

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seeking specific performance of contract, in respect of the residential house constructed on the open plot. In any case, after framing the issues, the plaintiff moved an application under Order 6 Rule 17 of the Civil Procedure Code, to amend the plaint. Except the amendments particularised in Clauses (e) and (f) of application (Exhibit-31), remaining were for correcting the typographical errors. Obviously, the defendant did not object to correction of typographical errors. However, the amendment sought vide Clauses (e) and (f), seeking to incorporate the pleadings in para-6, would not only change the frame of the suit, but would also amount to withdrawal of clear admission made by the plaintiff. Reason being, in para-6 of the plaint, the plaintiffs pleaded that the Agreement dated 27th February, 2012 was not to be “enforced” and it was a “temporary-hollow and unconcluded contract”. Now, by seeking leave to amend, the plaintiff seeks to plead that the agreement dated 27th February, 2012 was “executable and concluded”. Therefore, the amendment, sought would not only change the character of the suit, but would also amount to withdrawal of the clear admission, which has conferred right on the defendant. Therefore, such amendment cannot be permitted. Moreover, application seeking amendment does not disclose reason/s as to why amendment, was not sought before framing issue, which was essential, jurisdictional fact. The learned trial Court, while

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granting leave to amend the plaint, has overlooked the above aspects. For all these reasons, the impugned order is quashed and set aside. The application moved by the plaintiff seeking leave to amend the plaint, is allowed only to the extent of carrying out the clerical and typographical errors. Therefore, the application below Exhibit-31 in Special Civil Suit No. 52/2016 is partly allowed.

3. The petition is allowed and disposed of in the aforesaid terms.

(SANDEEP K. SHINDE, J.)