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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL WRIT PETITION NO. 1937 OF 2016

**M/S. FIZA CONSTRUCTION COMPANY
THROUGH PROPRIETOR**

....PETITIONER

V/s.

MR. BHASKAR DUKLYA THAKUR AND ORS

.....RESPONDENTS

Dr. Uday P. Warunjikar Advocate for the Petitioner

Mr. Suresh M. Kamble Advocate for Respondent nos. 2 to 6

Mr. Rohit P. Sakhadeo Advocate for Respondent nos. 7 to 9/CIDCO

Mr. Suresh M. Sabrad Advocate for Respondent no. 10

Mr. Jeetendra Sachhdev i/b Bhaghyashri S. Vishal Advocate for
Respondent no. 11

CORAM : NITIN W. SAMBRE, J.

DATE: MARCH 15, 2022.

P.C.:

1) Suit of the Petitioner-Plaintiff for specific performance being Special Civil Suit No. 606/2011 is informed to have reached at stage of recording of evidence as the issues are already framed. The fact that issues are framed after the impugned order rejecting the prayer for amendment passed on 27/10/2015 is not in dispute.

2) Suit for specific performance is based on Agreement dated 02/11/2008 whereas Application for amendment Exh. 53 is based on subsequent development viz. tri-partite Agreement dated 04/11/2011 and 26/09/2013 whereby proposed Defendant no. 10 has transferred interest to Defendant no. 11. As far as tri-partite Agreement dated 04/11/2011 is concerned, Defendant nos. 1 to 6 have entered into Agreement with Respondent-Defendant No. 10.

3) Fact remains that both these claims challenged in these two Agreements is well within the limitation of three years as prescribed under the Limitation Act. Apart from above, the aforesaid development took place after filing of the Suit.

4) In the aforesaid background, prayer for impleadment of Defendants who are party to these Agreements, challenge to the said Agreements can be viewed as one permissible under XXII Rule 10 of the Code of Civil Procedure, 1908 and also under Order VII Rule 17 of the Code of Civil Procedure as test of due diligence is satisfied.

5) In the aforesaid background, Court below in my opinion has committed an error in rejecting the prayer for amendment. That being so, order impugned dated 27/10/2015 passed below Exh. 53 is

hereby quashed and set aside. Exh. 53 allowed subject to deposit of cost of Rs. 5,000/- in the Court below. Deposit of cost shall be condition precedent. Trial Court shall order apportionment of the cost.

6) Petition stands allowed in the above terms.

[NITIN W. SAMBRE, J.]