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

WRIT PETITION NO.4466 OF 2018

Mr. Shabbir Kankaru Inamdar
Age: 58 years, Occ.: Business
R/o : Shop No. 10,
Varun Co-operative Housing Society,
Madina Chowk, Nashik. ...Petitioner

V/s.

1. Mr. Mirza Salimbeg Jabbarbeg
Age : 48 years, Occ.: Business,
2. Mr. Mirza Afjalbeg Jabbarbeg
Age : 50 years, Occ.: Business,

R/o: Varun Co-operative Housing
Society, Madina Chowk, Nashik. ...Respondents

Mr. Shriram S. Kulkarni a/w Mr. Sujay Palshikar for
Petitioner.

Mr. Salimuddin A. Shaikh for Respondent nos. 1 & 2.

CORAM: MADHAV J. JAMDAR, J.
DATE: 16th NOVEMBER, 2022

JUDGMENT :

1. In this Writ Petition important question regarding scope and ambit of expression "**any other relief to which he may be entitled**" as occurring in Section 22(1)(b) of Specific Relief Act, 1963 ("said Act" for short) falls for consideration.

2. By the present Writ Petition, the Petitioner is challenging order dated 4th March 2017 passed by learned Principal District Judge, Nashik below Exhibit 14 in Regular Civil Appeal No. 227 of 2013. By the impugned order, the said application, Exhibit 14 filed seeking amendment in the plaint made at the stage of appeal was rejected.

3. The Petitioner has filed Regular Civil Suit No. 763 of 2012 (Old Special Civil Suit No.440 of 2011) seeking specific performance of contract. The same was dismissed by the judgment and decree dated 31st August 2013 passed by the learned 5th Joint Civil Judge, Senior Division, Nashik. The learned Trial Court held that the Respondents have agreed to sell the suit property to the Petitioner for a total consideration of Rs.1,50,000/-, Respondent nos.1 and 2 have executed Agreement to Sale in favour of Petitioner on 17th November 2001 and thereby acknowledged receipt of Rs.1,40,000/- as an earnest money, the Petitioner is in possession of the suit property, Petitioner has proved readiness and willingness. As set out hereinabove although the learned Trial Court recorded findings in favour of Petitioner only on the point of limitation, non-suited the Petitioner and rejected the relief of specific performance. The learned Trial Court directed the Respondents to repay/refund earnest amount of Rs.1,40,000/- to the Petitioner.

4. The said judgment and decree of the learned Trial Court dated 31st August 2013 is challenged by the Petitioner before the District Court, Nashik by filing Regular Civil Appeal No.227 of 2013. In the said Appeal, the Petitioner has filed the application bearing Exhibit 14 seeking amendment in the plaint by adding the prayer clause seeking injunction restraining the Respondents from disturbing petitioner's possession. The said application has been dismissed by the impugned order on the ground that the relief of injunction will not come in the ambit of Section 22 of the said Act.

5. Mr. Kulkarni, learned Counsel appearing for the Petitioner contended that in view of non-obstante Clause of Section 22 of the said Act, provisions of C.P.C. will not apply to the amendment which the Petitioner intends to make, as the suit has been filed for specific performance. He submitted that scope of Section 22 of the said Act is wide and therefore amendment application should have been allowed. He relied on the decision of this Court, reported in **2013 (2) Mh. L.J. 699** in the matter between Shashikant Jagannath Powar Vs. Baburao Huvappa Kurhade (deceased) through LRs and Others, the decision of Supreme Court, reported in **(1982) 1 Supreme Court Cases 525**, in the matter between Babu Lal Vs. M/s Hazari Lal Kishori Lal and Others and the decision of Supreme Court, reported in

2022 SCC Online SC 1128, in the matter between Life Insurance Corporation of India Vs. Sanjeev Builders Private Limited and Another.

6. On the other hand, Mr. Shaikh, learned Advocate appearing for Respondent nos.1 and 2 submitted that the amendment is belated. He submitted that Section 22 of the said Act will apply only when the relief is sought regarding possession, partition or separate possession, in addition to the prayer of specific performance. He submitted that Section 22 of the said Act will not apply to the present amendment seeking to add prayer of injunction. He submitted that the relevant provision applicable will be Order VI, Rule 17. The Petitioner has failed to plead and establish due diligence as per proviso to order VI, Rule 17. In view of the absence of the same, the Petitioner is not entitled to amend the plaint. He therefore supported the impugned order.

7. The only reason given in the impugned order is that Section 22 of said Act will apply seeking amendment regarding possession, partition or refund of earnest money and it will not apply to the relief regarding injunction. Therefore it is necessary to examine the ambit and scope of Section 22 of the said Act.

8. The admitted position is that the suit in question has been filed for specific performance of contract. It is settled legal position that Section 22 enacts rule of pleading, which is

applicable when any person is suing for specific performance of contract for transfer of immovable property. Said Section 22 of the Specific Relief Act, 1963 reads as under:

"22. Power to grant relief for possession, partition, refund of earnest money, etc.—(1) Notwithstanding anything to the contrary contained in the Code of Civil Procedure, 1908 (5 of 1908), **any person suing for the specific performance of a contract for the transfer of immovable property may, in an appropriate case, ask for--**

(a) possession, or partition and separate possession, of the property, in addition to such performance; or

(b) any other relief to which he may be entitled, including the refund of any earnest money or deposit paid or [made by] him, in case his claim for specific performance is refused.

(2) No relief under clause (a) or clause (b) of sub-section (1) shall be granted by the Court unless it has been specifically claimed:

Provided that **where the plaintiff has not claimed any such relief in the plaint, the Court shall, at any stage of the proceeding, allow him to amend the plaint on such terms as may be just for including a claim for such relief.**

(3) The power of the Court to grant relief under clause (b) of sub-section (1) shall be without prejudice to its powers to award compensation under section 21."

(Emphasis supplied)

9. Section 22 of the said Act specifically provides that notwithstanding anything to the contrary contained in the Code of Civil Procedure, 1908 ("C.P.C."), the said rule of pleading as contained in Section 22 will apply to suit for specific performance. Section 22(1)(b) specifically states that in addition

to prayer seeking specific performance, any other relief to which the Plaintiff may be entitled can be sought including the refund of any earnest money or deposit paid in case claim for specific performance is refused. To understand the scope and ambit of the term "**any other relief to which he may be entitled**" as appearing in Section 22 (1)(b) of the said Act, it is necessary to examine rights and liabilities of buyer and seller as provided by Section 55 of the Transfer of Property Act, 1882, which is set out hereinbelow for ready reference:-

55: Rights and liabilities of buyer and seller.--

In the absence of a contract to the contrary, the buyer and the seller of immovable property respectively are subject to the **liabilities, and have the rights**, mentioned in the rules next following, or such of them as are **applicable to the property sold**:--

- (1) The seller is bound—
 - (a) to disclose to the buyer any material defect in the property [or in the seller's title thereto] of which the seller is, and the buyer is not, aware, and which the buyer could not with ordinary care discover;
 - (b) to produce to the buyer on his request for examination all documents of title relating to the property which are in the seller's possession or power;
 - (c) to answer to the best of his information all relevant questions put to him by the buyer in respect to the property or the title thereto;
 - (d) **on payment or tender of the amount due in respect of the price, to execute a proper conveyance of the property when the buyer tenders it to him for execution at a proper time and place;**

(e) between the date of the contract of sale and the delivery of the property, to take as much care of the property and all documents of title relating thereto which are in his possession, as an owner of ordinary prudence would take of such property and documents;

(f) to give, on being so required, the buyer, or such person as he directs, such possession of the property as its nature admits;

(g) to pay all public charges and rent accrued due in respect of the property up to the date of the sale, the interest on all encumbrances on such property due on such date, and, except where the property is sold subject to encumbrances, to discharge all encumbrances on the property then existing.

(2) The seller shall be deemed to contract with the buyer that the interest which the seller professes to transfer to the buyer subsists and that he has power to transfer the same.

Provided that, where the sale is made by a person in a fiduciary character, he shall be deemed to contract with the buyer that the seller has done no act whereby the property is encumbered or whereby he is hindered from transferring it.

The benefit of the contract mentioned in this rule shall be annexed to, and shall go with, the interest of the transferee as such, and may be enforced by every person in whom that interest is for the whole or any part thereof from time to time vested.

(3) Where the whole of the purchase-money has been paid to the seller, he is also bound to deliver to the buyer all documents of title relating to the property which are in the seller's possession or power:

Provided that, (a) where the seller retains any part of the property comprised in such documents, he is entitled to retain them all, and, (b) where the whole of such property is sold to different buyers the buyers, of the lot of greatest value is entitled to such documents. But in

case (a) the seller, and in case (b) the buyer of the lot of greatest value, is bound, upon every reasonable request by the buyer, or by any of the other buyers, as the case may be, and at the cost of the person making the request, to produce the said documents and furnish such true copies thereof or extracts therefrom as he may require; and in the meantime, the seller, or the buyer, of the lot of greatest value, as the case may be, shall keep the said documents safe, uncanceled and undefaced, unless prevented from so doing by fire or other inevitable accident.

(4) The seller is entitled—

(a) to the rents and profits of the property till the ownership thereof passes to the buyer;

(b) where the ownership of the property has passed to the buyer before payment of the whole of the purchase-money, to a charge upon the property in the hands of the buyer, [any transferee without consideration or any transferee, with notice of the non-payment,] for the amount of the purchase-money, or any part thereof remaining unpaid, and for interest on such amount or part [from the date on which possession has been delivered].

(5) The buyer is bound—

(a) to disclose to the seller any fact as to the nature or extent of the seller's interest in the property of which the buyer is aware, but of which he has reason to believe that the seller is not aware, and which materially increases the value of such interest;

(b) to pay or tender, at the time and place of completing the sale, the purchase-money to the seller or such person, as he directs: provided that, where the property is sold free from encumbrances, the buyer may retain out of the purchase-money the amount of any encumbrances on the property existing at the date of the sale, and shall pay the amount so retained to the persons entitled thereto;

(c) where the ownership of the property has passed to the buyer, to bear any loss arising

from the destruction, injury or decrease in value of the property not caused by the seller;

(d) where the ownership of the property has passed to the buyer, as between himself and the seller, to pay all public charges and rent which may become payable in respect of the property, the principal moneys due on any encumbrances subject to which the property is sold, and the interest thereon afterwards accruing due.

(6) The buyer is entitled—

(a) **where the ownership of the property has passed to him, to the benefit of any improvement in, or increase in value of, the property, and to the rents and profits thereof;**

(b) unless he has improperly declined to accept delivery of the property, to a charge on the property, as against the seller and all persons claiming under him [***] to the extent of the seller's interest in the property, for the amount of any purchase-money properly paid by the buyer in anticipation of the delivery and for interest on such amount; and, when he properly declines to accept the delivery, also for the earnest (if any) and for the costs (if any) awarded to him of a suit to compel specific performance of the contract or to obtain a decree for its rescission.

An omission to make such disclosures as are mentioned in this section, paragraph (1), clause (a), and paragraph (5), clause (a), is fraudulent.

(Emphasis supplied)

Liabilities of seller as provided by Section 55 *inter alia*

includes following aspects:

- (i) To execute proper conveyance of the property which is subject matter of the transaction after receipt of the entire consideration.

- (ii) To take as much care of the property as an owner of ordinary prudence would take of such property and all documents of title.
- (iii) To give possession of the property to buyer or such person as he directs.

10. Thus, the expression "**any other relief to which he may be entitled**" is required to be interpreted in the backdrop of rights and liabilities of buyer and seller as provided in Section 55 of the Transfer of Property Act.

11. The said expression "**any other relief to which he may be entitled**" is very broad and relief of injunction is certainly included in the same to protect rights of purchasers as envisaged under Section 55 of the Transfer of Property Act. Thus reasoning of the learned appellate Court that Section 22 of the said Act will apply only if the amendment concerns refund of earnest money as alternative relief or possession of the property, is contrary to Section 22 (1)(b).

12. Mr. Kulkarni to substantiate his contention has relied on paragraph 13 of the Supreme Court decision in Babu Lal (supra) which reads as under:

"13. The expression in-sub-section (1) of section 22 'in an appropriate case' is very significant, The plaintiff may ask for the relief of possession or

partition or separate possession 'in an appropriate case'. As pointed out earlier, in view of order 2, rule 2 of the Code of Civil Procedure, some doubt was entertained whether the relief for specific performance and partition and possession could be combined in one suit; one view being that the cause of action for claiming relief for partition and possession could accrue to the plaintiff only after he acquired title to the property on the execution of a sale deed in his favour and since the relief for specific performance of the contract for sale was not based on the same cause of action as the relief for partition and possession, the two reliefs could not be combined in one suit. Similarly, as a case may be visualized where after the contract between the plaintiff and the defendant the property passed in possession of a third person. A mere relief for specific performance of the contract of sale may not entitle the plaintiff to obtain possession as against the party in actual possession of the property. As against him, a decree for possession must be specifically claimed or such a person is not bound by the contract sought to be enforced. In a case where exclusive possession is with the contracting party, a decree for specific performance of the contract of sale simpliciter without specifically providing for delivery of possession, may give complete relief to the decree-holder. In order to satisfy the decree against him completely he is bound not only to

execute the sale-deed but also to put the property in possession of the decree-holder. This is no consonance with the provision of section 55 (1) of the Transfer of Property Act which provides that the seller is bound to give, on being so required, the buyer or such person as he directs, such possession of the property as its nature admits."

Thus, it is clear that reliefs which are required to protect rights of purchaser as envisaged under Section 55 of the Transfer of Property Act are all included in the ambit of expression "**any other relief to which he may be entitled**" occurring in Section 22(1)(b) of the said Act.

13. Mr. Kulkarni is also right in relying on paragraph 58 of the judgment of LIC of India (supra). Said paragraph reads as under:

"58. Section 22 has a non-obstante provision which overrides the CPC. **A plaintiff who claims specific performance of a contract for the transfer of immovable property, may in an appropriate case ask for possession, partition and separate possession of the property, in addition to specific performance. The plaintiff may also claim any other relief including the refund of earnest money or deposit paid, in case the claim for specific performance is refused.** Corresponding to the provisions of sub-section (5) of Section 21, **sub-section (2) of Section 22 stipulates that such relief cannot be granted by the court unless it has been specifically claimed.** However, the proviso requires that the court shall at any stage of the proceedings allow the plaintiff to amend the plaint to claim such relief where it has not

been originally claimed on such terms which may appear just.

14. It is very clear that proviso to Sub Section 2 of Section 22 of said Act enables Court at any stage of the proceedings to allow the Plaintiff to amend the plaint to claim such relief where it has not been originally claimed on such terms, which may appear just. It is well established that appeal is a continuation of the suit and in any case "at any stage of the proceeding" will include appellate stage. In Babu Lal (supra) the Supreme Court has held that even the execution proceeding are included in the expression "the proceeding" as appearing in proviso to Section 22 (2) of the said Act.

15. In Babu Lal (supra) Supreme Court has held that only purpose of Section 22 of the said Act is to avoid multiplicity of suits and that the Plaintiff may get appropriate relief without being hampered by procedural complications.

16. Therefore, the provision of Order VI Rule 17 of the Code of Civil Procedure is not applicable to the present case. The relief of injunction as sought to be added by amendment by the Petitioner is certainly included in the ambit of expression "any other relief to which he may be entitled" as occurring in Section 22(1)(b) of the said Act. Thus impugned order dated 4th March 2017 passed by the learned Principal District Judge, Nashik

below Exhibit 14 in Regular Civil Appeal No.227 of 2013 is quashed and set aside and the said Application bearing Exhibit 14 is allowed.

17. Proviso to Section 22 (2) specifically provides that the Court shall, at any stage of the proceedings, allow the Plaintiff to amend the plaint **on such terms as may be just** for including a claim for such relief. The suit has been filed on 19th April 2011. The trial Court passed the decree on 31st August 2013. The Appeal before the learned Appellate Court was filed on 3rd October, 2013. The amendment application has been filed belatedly on 2nd February 2017. Therefore, in the present case, it is necessary to compensate the Respondents. Therefore, Exhibit 14 application is allowed subject to payment of costs of Rs.25,000/-. Costs to be paid to the Respondents or deposited in the learned appellate Court within three weeks from today. The learned appellate Court to permit the Petitioner to amend the plaint within a period of two weeks thereafter. The learned appellate Court to allow the Petitioner to amend the plaint only after the deposit in Court or payment of cost is made to the Respondents within above time limit.

18. After amendment of the plaint Petitioner to serve the amended plaint on the Respondents within two weeks.

Respondents are at liberty to file their additional written statement within four weeks thereafter.

19. Writ Petition is allowed in above terms.

(MADHAV J. JAMDAR, J.)

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