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

WRIT PETITION 6645 OF 2022

Rajendra Sitaram Goel & anr. .Petitioners

Vs.

Jai Enterprises & Associates & ors. .Respondents

Mr. Jaydeep S. Deo, Advocate, for the Petitioners

Mr. Rahul S. Kadam, Advocate, for the Respondents

CORAM : ROHIT B. DEO, J.

DATE : 12.07.2022

P. C.

. At the oral request of the Petitioners, leave to amend the prayer clauses of the Petition. Amendment be carried out forthwith.

2. The Petitioner is the Plaintiff in Spl. Civil Suit 200 of 2011 which is brought for specific performance of MOU dated 11.07.2006.

3. The suit property is described as land admeasuring 4.67 HR situated at Wakad, Pune.

4. For the purpose of deciding the issue involved, it would not be necessary to consider in detail the suit averments or the defence.

5. The Plaintiffs preferred an Application seeking amendment of plaint (Exh. 119) under the provisions of O. VII, Rule 17 of the Code of Civil Procedure, 1908 and Sections 21 and 22 of the Specific Relief Act, 1963, which is only partly allowed by the order impugned, and to that extent the Plaintiff is dis-satisfied.

6. Proposed paragraph 20A seeks to bring on record the readiness and willingness to perform the Plaintiffs' part of the contract. The learned trial Court has rejected this part of the proposed amendment, and the learned counsel for the Plaintiff fairly submits that the Plaintiff is not pressing that part of the proposed amendment, atleast at the present stage.

7. Paragraphs 20B and 20C of the Application read

thus :-

"20B) The suit property is ideally located and there is no land of this magnitude available in the near vicinity and the same is therefore invaluable.

20C) The current market rate of the vacant lands in the near vicinity with NA potential is around Rs. 14,660/- per sq. mtrs., and considering the fact that Pune has been declared as Smart City and necessary development projects such as Metro rail, roads, bridges etc, are already commenced and being implemented, the market price of the subject suit property is going to increase many fold in the near future and hence the figure of compensation in lieu of specific performance cannot be estimated now and hence if at all for any reason whatsoever, this Hon'ble Court comes to the conclusion that the Plaintiff is not entitled for the primary relief of specific performance, then in that event the Plaintiff is entitled for the refund of the earnest money paid together with interest @ 18% p. a., it being used by Defendant No. 1 for commercial business purpose and for payment of consideration to the erstwhile owner Chinchwad Devasthan Trust and the Plaintiff is also entitled for the alternative relief or damages in lieu of specific performance, which is to be calculated and ascertained at the market value of similar such lands in the near vicinity, as may be prevailing as on the date of the decree, for which necessary relief to that effect is also sought."

8. The learned trial Court has rejected the proposed amendments at paragraphs 20B & 20C supra assuming that the proposed amendment is connected with and seeks to establish readiness and willingness of the Plaintiff. However, the learned trial Court has permitted the Plaintiff to amend the prayer clause and to incorporate prayers c1 and c2, whereby the Plaintiffs' claim damages, compensation and in the alternate, refund of earnest amount.

9. The learned trial Court has observed thus :-

"6. I have gone through the entire pleadings and it is found that the alternate relief of compensation and refund of the consideration is not mentioned by the plaintiff in the plaint. As per the new amendment in Specific Relief Act, the Court has no discretion to pass any relief, unless it is claimed. Therefore, to the extent of alternate relief of compensation, damages and refund of part consideration along with the interest can be allowed. The contents regarding the readiness and willingness which are the repetition and elaborated pleadings. Therefore, the amendment of para Nos. 20(A), 20(B) and 20(C), I do not find it necessary in this suit. Because, the said contention is only elaborated

and not relating with the alternative reliefs of compensation and refund of money. Therefore, the amendment in para Nos. 20(A), 20(B) and 20(C) cannot be considered at this stage, but the amendment in para No. 24(C) can be considered in the interest of justice.”

10. It is apparent that the rejection of the proposed amendment at paragraphs 20B and 20C is under the mistaken impression that the said paragraphs relate to the readiness and willingness of the Plaintiff to perform his part of the contract.

11. In my considered view, since the trial Court permitted the Plaintiffs to amend the prayers and to incorporate the prayers seeking compensation, damages and in the alternate, refund of the earnest amount, paragraphs 20B and 20C which pertain only to the reliefs of damages and compensation ought to have been permitted to be incorporated.

12. The order impugned is set aside to the extent that the Plaintiff is not permitted to incorporate paragraphs 20B

and 20C. The rest of the order impugned is confirmed.

13. The necessary amendment shall be carried out within a week and the consequential amendment in the Written Statement may be carried out within the next week.

14. If parties wish to adduce the evidence in view of the amendment, such evidence shall be concluded within 60 days of the amendment of the Written Statement and the Judgment shall be delivered within the next 30 days.

15. The Petition is disposed of in the aforesaid terms.

(ROHIT B. DEO, J.)