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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 1022 OF 2020**

Mrs. Jyoti alias Priti Manoj Nayak
Through POA holder
Manoj Madhukar Nayak

.... Petitioner.

V/s

Mutha Engineering Pvt. Ltd
Through POA holder
Balkrishna Nagnath Pawar

.... Respondent.

Mr. Manoj Nayak for the Petitioner.
Mr. Shailesh D. Chavan for Respondent.

CORAM: NITIN W. SAMBRE, J.

DATE: APRIL 18, 2022

PC.:-

1] Special Civil Suit No.23 of 2011 is initiated by the Petitioner for specific performance in which after the trial has commenced, Application-Exhibit-54 is taken out by the Petitioner for amendment of the Plaint under Order VI Rule 17 of the Civil Procedure Code, which is rejected vide order impugned dated 21st August, 2018. As such, this Petition.

2] By way of amendment, Petitioner/Plaintiff has sought

incorporation of pleadings to the extent of inclusion of Neha Construction as Defendant No.2 and *inter se* transactions between Defendant Nos.1 and 2.

3] Submissions of Counsel for the Petitioner are, fact that Respondent/Defendant No.1 claims to have purchased the property from Neha Construction and as such Neha Construction is an appropriate party, if not necessary is required to be inferred particularly having regard to stand taken by Respondent/Defendant No.1 to the extent of denial of vendor-vendee relationship. He has invited attention of this Court to the suit for eviction by Respondent/Defendant No.1 against the Petitioner in the capacity of landlord being Civil Suit No.206 of 2008 as the Petitioner is shown to be tenant of Respondent/Defendant No.1. According to him, Neha Construction with whom Respondent/Defendant No.1 has privity of contract has neither completed construction by obtaining completion certificate from the local planning authority nor deed of conveyance is specifically executed to that effect in favour of Defendant No.1. That being so, Neha Construction is a necessary party to the suit.

4] While opposing the prayer, Counsel for Respondent/Defendant No.1 would urge that the stand taken by Respondent/Defendant No.1 as regards his title to the suit property was apparent from the Written Statement. According to him, once the trial in the suit has commenced, amendment is rightly so rejected by the Trial Court as there was failure of due diligence on the part of the Petitioner. He would further claim that amendment as is sought is not germane to the cause to be decided in the suit and that being so, order impugned is justified.

5] Considered submissions.

6] The fact remains that Defendant No.1 i.e. Respondent herein has initiated Civil Suit No.206 of 2008 against the Petitioner for her eviction as tenant. It appears that Petitioner's case is based on oral agreement of sale entered *inter se* between the Petitioner and Defendant No.1. Defendant No.1 claims to have secured title to the suit property from proposed Defendant No.2.

7] In the aforesaid backdrop, if we appreciate very fact that source of title of Defendant No.1 is from Defendant No.2 and Petitioner/Plaintiff is claiming oral agreement for passing of such title in her favour, Defendant No.2 appears to be an appropriate party to the suit.

8] After having perused the schedule of the amendment which is tendered with application Exh.54, it is noticed that the petitioner/plaintiff has sought declaration in regard to the declaration-deed dated 27.07.1993 not to be part mentioned in the confirmation-deed bearing No.2043 of 2008. If the prayer for specific performance is granted, the said relief which is claimed by way of amendment will have direct bearing over the right of the petitioner/plaintiff. The amendment appears to be based on the testimony of the witness i.e. Sub-Registrar in whose evidence aforesaid facts were noticed by the petitioner.

9] In that view of the matter, in my opinion, Court below has

committed an error in refusing prayer for grant of amendment. That being so, Application-Exhibit-54 stands allowed and the order impugned dated 21st August, 2019 is hereby quashed and set aside.

10] Petitioner is at liberty to carry out appropriate amendment to the Plaint, subject to deposit of costs of Rs 25,000/- in the Trial Court within a period of four weeks from today, which the Respondent/Defendant No.1 will be entitled to withdraw.

11] Petition stands allowed in the aforesaid terms.

(NITIN W. SAMBRE, J.)