

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
[COMMERCIAL DIVISION]

INTERIM APPLICATION NO.1584 OF 2021

IN

COMMERCIAL SUIT NO.456 OF 2016

Hansaben Shantilal Makhecha and Ors. .. Applicants–Prop. Plaintiffs

In the matter between

Shantilal Rayji Makhecha and Anr. .. Plaintiffs

Vs.

Ram Amarjeet Pal and Ors. .. Defendants

Mr. Atul Daga, with Mr. Devansh Bheda and Ms. Amita Jasani, i/by
Purnanand & Co., for the Plaintiffs.

Mr. Girish Kedia for Defendant Nos.1, 2 and 7.

Mr. Sanjeev Singh, with Mr. Ritesh Singh and Mr. Sameer Brambhatt, for
Defendant Nos.3 and 4.

Ms. Jyoti Chavan, AGP for Defendant No.8.

Mr. Anoop Patil for Defendant No.9.

CORAM : A. K. MENON, J.

DATE : 24TH FEBRUARY, 2022.

P.C. :

1. By this IA, the plaintiffs seek amendment to the plaint. This is a pre-trial amendment. The schedule to the IA reveals, in the first instance, that the plaintiffs wish to bring on record legal representatives of deceased plaintiff no.1. Thereafter, further amendment is sought, which according to Mr. Daga, is to bring on record facts that have transpired subsequent to filing of the suit.

2. This aspect is contested by both Mr. Kedia and Mr. Singh on behalf of the defendants. They rely on the statements in the affidavit-in-reply of one Ramkumar Amarjeet Pal dated 20th July 2021 filed on behalf of defendant nos.1, 2 and 7 and an affidavit-in-reply of one Basantraj Meghraj Sethia, who is defendant no.3, filed on behalf of himself and defendant no.4. The objections, as set out in both the affidavits and as canvassed before me today by both the learned counsel appearing for these defendants, are that it is after filing of the written statements that the plaintiffs have come up with this amendment under the guise of correcting typographical errors and to bring on record further developments. According to both the counsel, the facts that are now sought to be introduced by the parties are all known to the deceased plaintiff no.1 and to the legal heirs since the plaint is declared by plaintiff no.2. Since the plaintiff no.2 was well aware of these facts and that under the guise of bringing on record the legal heirs of deceased plaintiff no.1, the plaintiff no.2 has now proposed these amendments.

3. The other ground for opposition is that there is a gross delay in filing the present IA since written statements were filed in the year 2016 and that the amendment application is made only in January, 2021. That appears to be the reason that the amendment was sought after the demise of original plaintiff no.1 on 2nd December 2020. I am not convinced that on account of delay and laches, the amendment should be refused. One other ground that is taken in reply is that amendment proposed changes the nature of the case.

This is a partnership dispute and as a legal heir of the deceased partner, amendment is being sought. On a query from the court, neither learned counsel for defendants 1, 2 and 7 nor defendants 3 and 4 were able to demonstrate how the nature of the suit is proposed to be changed.

4. The learned counsel for the defendants 1, 2 & 7 and 3 & 4 also oppose the amendment on the ground that three applications have been made for ad-interim reliefs and ad-interim reliefs had been refused on each occasion. No appeal was filed against refusal of ad-interim reliefs, but they apprehend by citing the amendment to the plaint, once again an attempt will be made to seek ad-interim reliefs.

5. Mr. Daga, on instructions of the applicants-plaintiffs, states that if the amendment is allowed, the plaintiff will not seek any further ad-interim reliefs in the pending motion or file a fresh application for any ad-interim reliefs by virtue of the amendment. In view thereof, no prejudice of whatsoever nature would be caused to the defendants.

6. In my view, this pre-trial amendment deserves to be allowed since issues are yet to be framed. Accordingly, I pass the following order :-

- (i) Subject to payment of costs of Rs.25,000/- to the contesting defendants, i.e. Rs.25,000/- to defendants 1, 2 & 7 collectively and Rs.25,000/- to defendants 3 & 4 collectively, within a period of four weeks from today, there will be an order in terms of prayer clause (a) of the IA.

- (ii) Amendment to be carried out within two weeks after payment of costs.
- (iii) If costs are not paid within the stipulated period, this order shall stand vacated and the IA shall stand dismissed.
- (iv) Written Statement to the amended plaint to be filed within eight weeks from the date of service of amended plaint.
- (v) IA is disposed in the above terms.

(A.K. MENON, J.)