

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.5627 OF 2022

Abbasali Ibrahim Jamadar & Anr.

...Petitioners

Versus

Tukaram Pandurang Jagdale

Since deceased through legal heirs

1a. Parashram Tukaram Jagdale & Ors.

...Respondents

Mr. Kuldeep U. Nikam for the petitioners.

Mr. Tejpal S. Ingale for the respondents.

Coram : Sharmila U. Deshmukh, J.

Date : July 3, 2023.

P. C. :

1. The petitioner questions the order dated 10th December, 2021 passed by the Civil Judge, Senior Division, Sangli below Exhibit-33 in Regular Civil Suit No.290 of 2018 dismissing the petitioner's application for amendment of plaint.

2. Heard learned counsel appearing for the parties.

3. Learned counsel appearing for the petitioners submits that by the proposed amendment, the petitioners sought to include a relief of specific performance of the agreement for sale dated 21st March, 2017. He would submit that the necessary foundation in that respect

was already laid in the plaint, however, instead of seeking the relief of specific performance of sale, the relief of perpetual injunction was sought. He would further submit that there is no amendment proposed in the body of plaint and that there is no fresh cause of action introduced. He would further contend that the only reason that application has been dismissed is that, the agreement for sale is dated 15th July, 2017 and the declaration is required to be sought within a period of three years and, as such, the claim is held to be time barred. He would further submit that the Apex Court in the case of ***Life Insurance Corporation of India Vs. Sanjeev Builders Pvt. Ltd., [Civil Appeal No. 5909 of 2022, decided on September 1, 2022]*** has held that there is no absolute rule that in every case where relief is barred because of limitation, amendment should not be allowed.

4. Learned counsel for the petitioner would further submit that the notice terminating the agreement was issued on 6th July, 2018, and, as such, the claim for specific performance of the agreement for sale was required to be raised on or before 6th July, 2021. He would submit that considering the decision of Apex Court in *suo moto* Writ Petition (C) No.3 of 2020, the period from 15th March, 2020 till 28th February, 2022 was excluded for the purpose of limitation and as such, the claim cannot be said to be time barred.

5. *Per contra*, learned counsel appearing for the respondents submits that as per the petitioner's own claim, the cause of action arose on 6th July, 2018 and, as such, the suit was required to be instituted within a period of three years as per the provisions of Article 54 of the Limitation Act, 1963. He would further submit that the amendment in question is a post-trial amendment, as the affidavit of evidence has already been filed. He would urge that the amendment application has been filed, as the application for temporary injunction came to be refused. He would dispute that by virtue of the order of the Apex Court, the limitation in the present case stood extended due to Covid pandemic. In support of his submissions, he rely upon the decisions of the Apex Court in the case of ***T. L. Muddukrishana & Anr. Vs. Lalitha Ramchandra Rao, [(1997) 2 SCC 661]*** and ***Tarlok Singh Vs. Vijay Kumar Sabharwal, [(1996) 8 SCC 367]***.

6. Considered the submissions of the parties.

7. Before adverting to the the facts of the present case, it would be beneficial to refer to the decisions of the Apex Court in the case of ***Life Insurance Corporation of India Vs. Sanjeev Builders Pvt. Ltd.*** (supra) relied upon by the petitioners. The Apex Court in the said decision has considered the law on the issue of allowing or rejecting a

prayer for amendment of pleadings, more particularly when the plea of limitation was taken by one of the parties. In paragraph No. 19 of the petition, the Apex Court has held that it is equally well settled that there is no absolute rule that in every case where the relief is barred because of limitation, amendment should not be allowed and that it is always open to the Court to allow an amendment if it is of the view that allowing of an amendment shall subserve the ultimate cause of justice and avoid further litigation. The Apex Court after considering the law on the subject has observed in paragraph No.30 that the Courts generally, as a rule, will decline to allow amendments if a fresh suit on the amended claim would be barred by limitation on the date of filing of application. But that would be a factor to be taken into account in the exercise of discretion as to whether the amendment should be allowed and does not affect the power of Court to allow if that is required in the interest of justice. The conclusions were summed-up in paragraph No. 70 of the judgment, which are relevant for our purpose. The relevant conclusions would be clause (iii), (iv) and (ix) which reads as under.

- “(iii) The prayer for amendment is to be allowed
 - (i) if the amendment is required for effective and proper adjudication of the controversy between the parties, and
 - (ii) to avoid multiplicity of proceedings,

provided

(a) the amendment does not result in injustice to the other side,

(b) by the amendment, the parties seeking amendment does not seek to withdraw any clear admission made by the party which confers a right on the other side and

(c) the amendment does not raise a time barred claim, resulting in divesting of the other side of a valuable accrued right (in certain situations).

(iv) A prayer for amendment is generally required to be allowed unless

(i) by the amendment, a time barred claim is sought to be introduced, in which case the fact that the claim would be time barred because a relevant factor for consideration,

(ii) the amendment changes the nature of the suit,

(iii) the prayer for amendment is *malafide*, or

(iv) by the amendment, the other side loses a valid defence.

(ix) Delay in applying for amendment alone is not a ground to disallow the prayer. Where the aspect of delay is arguable, the prayer for amendment could be allowed and the issue of limitation framed separately for decision.”

8. In the light of guiding principles which are laid down by the Apex Court, it will now have to be considered whether the amendment of plaint in the present case is required to be allowed. A perusal of plaint in Regular Civil Suit No. 290 of 2018 discloses that the case of petitioner is that an agreement for sale was entered into

on 21st March, 2017 between the petitioners and respondent no.1 herein (since decd). The sale consideration was agreed at Rs. 61,00,000/- and a sum of Rs. 5,00,000/- was paid as earnest money. It is further case of the petitioners that respondent no.1 did not come forward for the registration of sale deed and for the said purpose, a notice was issued on 6th July, 2017 pointing out non compliance of the obligations of respondent no.1. It is further case of the petitioners that respondent no.1 had expired on 8th August, 2017 and an enquiry made as to whether there is necessary mutation entry in the revenue records carried out, to which the response was that the process was going on.

9. It is the case of petitioners in the plaint that on 26th May, 2018, the respondents furnished the copy of mutation entry no. 56684 to the petitioners, upon perusal of which, the petitioners found that name of one of the legal heirs was not brought on record and in that respect a notice came to be issued by the petitioners to the respondent. In response to the said notice by communication dated 19th June, 2018, the respondents informed the petitioners that there was a Will of deceased and as such, the daughter was not having any right, title or interest in the property. It is further claimed that by the said notice, the petitioner was called upon to complete the sale deed,

failing which the earnest money will be forfeited. The plaint further states that on 6th July, 2018 the notice came to be issued terminating the agreement for sale and forfeiting the earnest money deposited which was the cause of action for the petitioner to file the suit.

10. Considering the pleadings which have come on record, it is evident that the foundation pleading for a claim of specific performance of agreement for sale is laid down in the plaint. The specific contention of the petitioner in the plaint is as regards the agreement for sale executed between the petitioners and respondent no.1 (since decd), the various correspondence which was exchanged between the parties regarding the fulfillment of obligations as also the execution of sale deed failing which, the consequence of forfeiture of earnest money is recorded.

11. Pertinently, the cause of action pleaded is the notice dated 6th July, 2018 terminating the agreement for sale and forfeiting the earnest money. A perusal of the application for amendment indicates that the petitioner seeks to amend the cause title from Regular Civil Suit to Special Civil Suit and to incorporate a relief seeking execution of sale deed as per the agreement for sale and the legal averments as regards the payment of Court fees and to incorporate the reliefs in the prayer clause. Considering the amendments which are proposed,

it could not be said that the proposed amendment changes the nature of suit or introduces any fresh cause of action. The objection of learned counsel appearing for the respondents is that the proposed amendment seeks to introduce a time barred claim is a mixed question of fact and law and will have to be considered during trial.

12. I have already indicated the findings of the Apex Court in the case of ***Life Insurance Corporation of India Vs. Sanjeev Builders Pvt. Ltd.*** wherein the Apex Court has held that there is no absolute rule that in every case where a relief is barred because of limitation, the amendment should not be allowed. Considering the factual foundation which has been laid in the pleadings, in my opinion, the proposed amendment would subserve the cause of justice and would prevent further litigation. The interest of respondents-defendants can be taken care of by directing that the amendment will not relate back to the date of institution of suit but will come into effect from the date of application and that necessary issue as regards the limitation would be framed.

13. As far as in the decision in ***Tarlok Singh Vs. Vijay Kumar Sabharwal*** which has been relied upon by the learned counsel appearing for the petitioners is considered, the Apex Court was considering the question as to whether the proposed amendment

converting a suit for specific performance of the agreement was barred by limitation. The Court was considering the said issue in view of the dispute between the parties as to when the limitation would begin to run. In the facts of that case, the Trial Court negated the plea of limitation allowed the application and pursuant thereto had decreed the suit. The Apex Court held that the crucial date would be the date on which the amendment was ordered by which date the suit was barred by limitation and as such, held that the Court was not right in decreeing the suit. The said decision does not assist the case of the petitioners as the same was not considering an application filed under order-6, Rule 17.

14. The next decision which has been relied upon is the decision of Apex Court in the case of ***T. L. Muddukrishana & Anr. Vs. Lalitha Ramchandra Rao***. In the facts of that case, the suit was filed for mandatory injunction and an application for amendment came to be filed seeking specific performance of contract. The Apex Court after considering the provisions of Limitation Act, held that the application for amendment was filed after the expiry of three years and it would certainly change the cause of action as required to be specified in the plaint. The said decision was rendered in the facts of that case where cause of action was required to be stated initially in the plaint but was

not pleaded and was sought to be amended along with an application for specific performance, and as such, the amendment was refused.

15. In the present case, as indicated above, the factual foundation has been laid in the plaint and the proposed amendment seeks to incorporate legal submissions as well as a prayer of seeking specific performance of the agreement for sale. In my opinion, the amendment is required to be allowed to ensure that the adjudication is complete and that there is no further litigation.

16. As regards the contention that the trial has commenced, it is settled by *catena* of decisions that the amendment is required to be allowed if the amendment is necessary for the effective adjudication and the opposite party can be compensated with cost.

17. Considering the above discussion, in my opinion, the proposed amendment can be permitted to be allowed subject to payment of cost of Rs.15,000/- to be paid by the petitioners to the respondents-plaintiffs within a period of three weeks from the date of uploading of the order.

18. The impugned order dated 10th December, 2021 is hereby quashed and set aside subject to payment of cost as directed above. As the impugned order is quashed and set aside, the application for

amendment dated 15th November, 2021 stands allowed.

19. The writ petition is allowed in the above terms.

[Sharmila U. Deshmukh, J.]