

Ashwini V

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 2070 OF 2013**

SHAILESH RAMNIKLAL SHAH,
Age about 59 years,
Occ: Agri & Business,
R/o. Flat No. 6, First Floor,
Amarkunj, J.B. Nagar, Andheri (E),
Mumbai 400 059

... PETITIONER

~ VERSUS ~

BANDHU PARSHURAM KHADE,
Age about 45 years,
Occ: Agriculturist,
R/o. Gudhwan, Taluka Karjat,
District Raigad.

... RESPONDENT

APPEARANCES

FOR THE PETITIONER Mr Dilip Bodake.

FOR RESPONDENT None.

CORAM : Neela Gokhale, J.

DATED : 3rd May 2023

ORAL JUDGMENT (Per Neela Gokhale J):-

1. **Rule.** The record shows that the Respondent is served by an order dated 3rd April 2013, but has consistently failed to appear. Hence, Rule made returnable forthwith.

2. The Petitioner has challenged order dated 3rd November 2012 passed by the learned Civil Judge Junior Division (“**CJJD**”) at Karjat, District Raigad, below application at Exhibit 33 in Regular Civil Suit No. 113 of 2008. The Petitioner is the original Plaintiff. He sought to carry out certain amendments in the plaint and to implead a third party purchaser one Shri. Jaykishan Pahalajrai Jethara as Defendant in the suit. The application seeking amendment of the plaint was rejected by the learned CJJD. It is this order which is assailed in the present Petition.

3. Mr. Dilip Bodake learned Counsel for the Petitioner states that the Petitioner filed R.C.S. No. 113 of 2008 before the learned CJJD against the Respondents, seeking specific performance of contract on the basis of an Agreement of Sale dated 1st April 2008. In the alternative the Petitioner sought refund of the earnest money alongwith 18% interest per annum from the Respondents. There was also a prayer for consequential relief of perpetual injunction against the Respondent.

4. Mr. Bodake learned Counsel for the Petitioner submits that during the pendency of the suit, the Petitioner learnt that the Respondents had alienated the suit property in favour of one Shri. Jaykishan Pahalajrai Jethara and hence it had become necessary for

the Petitioner to implead Shri. Jaykishan Pahalajrai Jethara and also amend some pleadings in the plaint.

5. The Respondents contested the amendment application on the ground of delay in seeking the amendment since the trial in the suit had already commenced.

6. The learned CJJD has recorded a finding, that the Respondent had pleaded the fact regarding alienation of the suit property in the say filed by him to the application seeing interim injunction as well as in the written statement. Despite the Petitioner being aware of the said fact, the Petitioner had failed to take steps to seek such amendment, till the trial commenced. The learned CJJD observed that since the Petitioner failed to satisfy the test of due diligence, the amendment application cannot be allowed. The amendment application was thus, dismissed by the court.

7. Mr. Bodake submits that the written statement was filed on 6th December 2008. It was pleaded by the Respondent that the Agreement of Sale dated 1st April 2008 was already executed and registered in favour of the Shri. Jaykishan Pahalajrai Jethara. He therefore, contends that the mere knowledge of execution and registration of an 'Agreement of Sale' is not sufficient for the third party purchaser to acquire an interest or right in the suit property and the Petitioner was thus not entitled to implead the said Shri. Jaykishan Pahalajrai Jethara in the suit at that stage. It was only much later that he learnt about the actual alienation of the suit property by conveyance.

8. Perused the record. It is well settled law that ordinarily the Court must be extremely liberal in granting the prayer of amendment if the Court is of the view that if said amendment is not allowed, the party, who is prayed for said amendment, shall suffer irreparable loss and injury. It is also equally well settled that there is no absolute rule that in every case if the trial has commenced, amendment should not be granted. 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. Admittedly, third party interest have been created in the suit property in favour of Shri. Jaykishan Pahalajrai Jethara. The original suit is for specific performance of the Agreement to Sell or in the alternative refund of the earnest money with interest. Since third party interests have been created in the suit property, the third purchaser namely Shri. Jaykishan Pahalajrai Jethara is a necessary party to the said suit. It is therefore necessary for proper determination of issues in the suit that the third party purchaser be impleaded to render complete determination and to avoid further multiplicity of proceedings.

9. In the circumstances, no purpose will be served by refusing permission to amend and bring on record the third-party purchaser and amend the pleadings to that extent. However, considering the delay on the part of the plaintiff in making the amendment application, it will subserve the end of justice if the application is allowed subject to costs of Rs. 2,500/- which shall be deposited by the plaintiff in the Taluka Legal Aid Services Authority, Karjat. The order dated 3rd November 2012 is quashed and set aside.

10. Amendment to be carried out within a period of 14 days from the date of uploading of the present order. An amended plaint may be served on the Respondents on the same day when the amendment is carried out.

11. Rule is made absolute in terms of prayer clause (b). No orders as to costs.

(Neela Gokhale, J)