

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 3071 OF 2023

M/s. V. V. Enterprises & Others.

...Petitioners.

Versus

Shree Mandar CHS Ltd.

..Respondent.

Mr. Mandar Limaye for the petitioner.

Mr. Mayuresh Modgi for the respondent.

Coram : Sharmila U. Deshmukh, J.

Date : July 4, 2023.

P. C. :

1. Heard. The challenge in the petition is to the order dated 16th January 2023 passed in Regular Civil Suit No. 530 of 2021, permitting the application filed by the respondent – plaintiff for amendment of plaint.

2. Learned counsel for the petitioner points out that pursuant to a development agreement dated 23rd June 2017, the petitioner – developer was permitted to carry out construction from 1st to 5th floor. He would further submit that pursuant to a permanent alternate accommodation tripartite agreement, which was executed by the developer along with the society as well as the individual members,

there was novation of contract and there was permission to construct upto 8th floor. He would further submit that the issue as regards the consent being obtained by fraud and coercion, is a case which has been introduced subsequent to the observations of this Court in Writ Petition No. 6014 of 2022 wherein this Court has observed that there is no averment in the suit as would indicate that the issue of informed consent as envisaged under section 7 and 7A of the Maharashtra Ownership Flats Act, 1963 was raised and fell for consideration. It was further observed that it is not the case of plaintiff that the revision of the building plan falls foul of the provisions of MOFA. He has invited the attention of this Court to the proposed amendment in that respect.

3. *Per contra*, Mr. Modgi, learned counsel for the respondent supports the impugned order and submits that the amendment sought is a pretrial amendment and ought to be liberally allowed. He would further submit that the amendment does not change the nature of suit or introduce a fresh cause of action and, as such, the amendment will not prejudice the petitioner who will be entitled to file their reply to the amended pleadings.

4. Considered the submissions. It is not in dispute that the

application filed under Order-VI Rule-17 of CPC is a pre-trial amendment. It is now well settled by the catena of decisions, the pre-trial amendments are to be liberally allowed. It is also well settled that at the time of deciding the application for amendment, the Court is not required to go into the merits of amendment.

5. Regular Civil Suit No.530 of 2021 is filed by the respondent – plaintiff for a declaration and injunction laying foundation in the pleadings which indicate the development agreement entered into between the parties. Declaration is sought that the construction of additional floors on 6th, 7th and 8th floors of building on the basis of redevelopment agreement and power of attorney are *per se* illegal. By the proposed amendment, the petitioner seeks to put on record the registered agreement which was entered into between the parties and the position that after executing the registered agreement, separate consent letters were obtained by fraud. Considering the amendment which is proposed, in my opinion, the same does not change the nature of suit or seek to introduce any fresh cause of action. Foundation of the proposed amendment is already forming part of the pleadings and considering that the amendment is a pre-trial amendment, the same is required to be liberally allowed.

6. In view of the above discussion, there is no merit in the writ petition. Writ petition stands dismissed.

7. Needless to clarify that the petitioner is at liberty to file written statement to the amended plaint.

[Sharmila U. Deshmukh, J.]