

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.14929 OF 2022

M/s. Prathamesh Infra Realty Pvt. Ltd.,

Thr. Its director

Mr. Ajit S. Singh

...Petitioner

Versus

Anusayabai Maruti Jitekar & Ors.

...Respondents

—————
Mr. Sagar Kasar i/b Mr. Susmit Phatale for the Petitioner.

*Mr. Nitesh Rangari i/b Mr. Rohit Sakhdeo for the Respondent Nos. 7 to 9
(CIDCO)*

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Coram : Sharmila U. Deshmukh, J.

Date : July 28, 2023.

P. C. :

1. The Petition questions the order dated 25th March, 2022 rejecting the Petitioner's Application for amendment under Order 6 Rule 7 seeking to correct the name of the Petitioner-Company in the cause title.

2. Heard Mr. Sagar Kasar learned counsel appearing for the Petitioner and Mr. Nitesh Rangari learned counsel appearing for the Respondent Nos. 7 to 9.

3. Learned counsel appearing for the Petitioner submits that the proposed amendment only sought a correction in the cause title of the Special Civil Suit No. 193 of 2014 as the name of the Petitioner Company was not correctly mentioned. He would further submit that as the name

was not correctly mentioned, an Application came to be filed under Order 7 Rule 11 of CPC for rejection of the plaint, which came to be allowed as against which First Appeal (L) No. 12092 of 2022 was filed. He has invited the attention of this Court to the Order dated 11th July, 2023 passed in the Interim Application filed in the First Appeal. Paragraph No. 3, 4 and 7 of the order dated 11th July, 2023 reads as under:

“3. The appellant filed Special civil Suit No. 193 of 2014 specific performance of an agreement of 11th September, 2013. That agreement was between the appellant, a private limited company, and the defendants. It seems that in the cause title of the Suit of the plaint, the Plaintiff was shown as a private limited company but below that was an endorsement that it was a proprietorship (“malaki sanstha”). The Plaintiff applied for an amendment under Order 6, Rule 17 CPC. This was rejected. The defendants sought a rejection of the plaint under Order 7 Rule 11 CPC and, by the impugned order dated 31st March, 2022, the Joint Civil Judge, Senior Division, Panvel allowed that Order 7 Rule 11 application.

4. The impugned order is unsustainable. The name of the company is correctly shown. It is only an endorsement below that which is found to be incorrect. In fact a Senior Advocate has filed an affidavit accepting that the error was inadvertent and was his oversight.

7. We are told that against the rejection of the Order 6, Rule 17 application, a separate Writ Petition has been filed. It is for this reason that we do not allow the amendment, which we would otherwise have immediately done.”

4. In view of the decision of the Division Bench of this Court observing that, the name of the Company is correctly shown and it is only endorsement below which is found to be incorrect the impugned order rejecting the Application for amendment on the ground that the right had accrued to the Defendant to raise objection regarding the maintainability of the suit is unsustainable. It may be noted that the Division Bench of this court in paragraph No. 7 had observed that as this Writ Petition had been filed, the amendment was not allowed by the Division Bench which they would have otherwise immediately done

5. In view of the above the Writ Petition stands allowed. The impugned order dated 25th March, 2022 is hereby quashed and set aside. As the impugned order is quashed and set aside the Application below Exhibit-133 stands allowed. The Writ Petition stands allowed.

[Sharmila U. Deshmukh, J.]

This order is corrected as per speaking to the minutes of order dated 3rd August, 2023.