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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.7448 OF 2016

Laxmi Mukund Bhoir & Ors.

... Petitioners

V/s.

Dinesh Shamji Shah & Anr.

... Respondents

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Mr. Ashutosh R. Gole for the petitioners.

Mr. P. J. Thorat i/by Mr. Bholaprasad S. Shukla for
respondent No.1.

CORAM : AMIT BORKAR, J.

DATED : AUGUST 25, 2023

P.C.:

1. This petition under Article 227 of the Constitution of India challenges order dated 15th June 2016, permitting the plaintiff to amend plaint.

2. The petitioners are owner of the structure which is subject matter of the suit. The respondent No.2-Municipal Corporation issued notice under section 351 of the Mumbai Municipal Corporation Act, 1888 to the plaintiff. The plaintiff, therefore, challenged the validity of notice by filing the said suit. The trial Court framed issues and the hearing of the suit started. However, before framing of issues the suit structure was demolished. The plaintiff, therefore, filed an application for amendment in April 2023. The trial Court by the impugned order allowed the

application for amendment.

3. The owner has, therefore, filed present writ petition. Learned advocate for the petitioners submitted that the trial Court has exercised jurisdiction to allow the amendment based on the factors which are not borne out from material on record. The satisfaction of due diligence has not been recorded. Allowing of amendment causes prejudice to the owner. Initially, suit was in relation to constructed portion. However, part of the amendment is in relation to land below the structure which was never subject matter of the suit. In support of his contentions, he relied on following judgments:

(a) **Rajesh Kumar Aggarwal And Others v. K.K. Modi And Others** reported in (2006) 4 SCC 385;

(b) **Asian Hotels (North) Limited v. Alok Kumar Lodha And Others** reported in (2022) 8 SCC 145;

(c) **Life Insurance Corporation of India v. Sanjeev Builders Private Limited And Another** reported in 2022 SCC OnLine SC 1128.

(d) **Damodhardas Govindprasad Sangi v. Fatehsinh s/o. Kalyanji Thakkar Since deceased through L.Rs. & Others** in Writ Petition No.6971 of 2022 (Aurangabad Bench) decided on 12th December 2022.

4. Having heard the learned advocate for the petitioners, in my opinion, the cause of action which prompted plaintiff to file application for amendment accrued during pendency of the suit. It

appears that immediately after the demolition of the suit structure, an application for amendment is filed seeking reliefs for declaration that demolition carried out by the corporation on 5th April 2013 be declared as null and void and consequential mandatory order to restore suit premises to its original position. Other consequential order in relation to the declaration, i.e. injunction restraining defendants from dispossessing the plaintiff from the suit structure and to provide alternative accommodation in lieu of demolished structure are also prayed.

5. On consideration of schedule of amendment, in my opinion, the petitioners are right in contending that the original suit having been filed in relation to the constructed portion of the structure, the amendment ought to be restricted to the constructed portion of the structure. However, learned advocate for the plaintiff, on instructions, states that the plaintiff be permitted to delete the word “land” in prayer clauses A(1), A(2) and A(4) of the Schedule of Amendment. Accordingly, the petitioner is permitted to delete word “land” from said prayer clauses.

6. In so far as prayer clause A(3) is concerned, learned advocate for the petitioner submitted that the purpose of prayer clause A(4) shall be frustrated if the petitioner is unable to pray for relief restraining defendant Nos.2 to 4 from using TDR of the suit property. However, considering the relief claimed in prayer clause A(4), it is not necessary to claim final relief in terms of prayer clause A(3) as such interim relief can be claimed by the petitioner which would be in the aid of final relief in terms of prayer clause A(4).

However, grant of such liberty may not be construed as recognition of right of the petitioner to claim such interim relief. If such interim relief is claimed by the petitioner, the Trial Court shall decide such application on its own merits.

7. In so far as grant of relief in terms of prayer clause (b) of the Chamber Summons is concerned, the effect of relief being prayed during pendency of the chamber summons and the chamber summons is decided finally, the life of relief under prayer clause (b) of the Chamber Summons has come to an end.

8. For the reasons stated above, order dated 15 June 2016 is confirmed, subject to deletion of word “land” from prayer clauses A(1), A(2), and A(4).

9. The writ petition stands partly allowed to the extent of dismissing amendment in terms of prayer clause A(3) and clarification of prayer clause (b) of the Chamber Summons.

10. The writ petition stands disposed of in above terms. No costs.

(AMIT BORKAR, J.)