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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 14547 OF 2022

Rajkumari Renukadevi Batliwalla

.. Petitioner

Versus

Trade Impex Pvt. Ltd. and Ors.

.. Respondents

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- Mr. Raju Subramaniam, Senior Advocate a/w. Mr. Sarosh Bharucha, Mr. Maneck Mulla, Ms. Rukshin Ghiara and Mr. Harsh Thadani i/by M. Mulla Associates for Petitioner.
 - Dr. Virendra Tulzapurkar, Senior Advocate a/w. Mr. Rajesh Shah, Mr. Mahernosh Humranwala, Mrs. Heena Shah and Mr. Naozad Golwala i/by Mahernosh Humranwala for Respondent No.1.
 - Mr. Neerav Merchant a/w. Mr. Nadeem Shama i/by Thakordas & Madgavkar for Respondent Nos.4 to 6.
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CORAM : MILIND N. JADHAV, J.

DATE : JANUARY 30, 2023.

P.C.:

1. Heard Mr. Subramaniam, learned Senior Advocate appearing for Petitioner; Dr. Tulzapurkar, learned Senior Advocate appearing for Respondent No.1 and Mr. Merchant, learned Advocate for Respondent Nos.4 and 6.

2. On 18.01.2023, this Court passed the following order:-

“1. Heard Mr. Subramaniam, learned Senior Advocate appearing for Petitioner; Dr. Tulzapurkar, learned Senior Advocate appearing for Respondent No. 1 and Mr. Merchant, learned Advocate for Respondent Nos. 4 and 6.

2. By consent of the parties, hearing of Chamber Summons No. 2746 of 2013 seeking amendment of the suit plaint in Suit No. 695 of 1978 is taken up for hearing.

3. Dr. Tulzapurkar, learned Senior Advocate appearing for

Respondent No. 1 (original Plaintiff) would submit that by the said Chamber Summons, Plaintiff desires to seek amendment of the suit plaint and challenge the family arrangement between the Defendants' family members to the extent of the subject suit property in the said suit. He would submit that the suit property comprises of 15 flats and the suit seeks specific performance of the agreement dated 14.08.1974 against the vendor who is since deceased. That legal heirs of the vendor are now on record.

4. He has fairly submitted that there is a pending partition suit being Suit No. 76 of 1970 filed in the Civil Court in Hyderabad seeking partition of properties of the vendor's family which include the suit properties i.e. the 15 flats. That apart, another suit namely Suit No. 536 of 1980 has been filed by the Plaintiff against the vendor and his family seeking declaration that the suit property i.e. 15 flats exclusively belong to the vendor and for specific performance of the agreement dated 14.08.1974 which is the subject matter of Suit No. 695 of 1978. It is submitted that earlier both suits had abated and the parties had approached the Supreme Court. The Supreme Court has passed an order admitting the SLP and directed completion of evidence in the suits.

5. During the course of arguments, it transpires that in the suit for effecting partition of the properties of the vendor's family in the Civil Court in Hyderabad, a preliminary decree has been passed and a final decree is yet to be passed. It has also been informed across the bar that an Application was made by the Plaintiff before the Civil Court in Hyderabad in respect of seeking an injunction / restraint on the suit property which is the subject matter of the present suit i.e. the 15 flats.

6. I am informed that an order has been passed and the parties have thereafter approached the Supreme Court and the Supreme Court has also passed a further order. Today copies of the said order passed by the Civil Court at Hyderabad and the Supreme Court are not available and both parties have sought time to produce the same.

7. It is seen that in the event if the suit property i.e. 15 flats in the present suit No. 695 of 1978 has been protected, then the question of maintainability of the Chamber Summons would not arise and considering that the Supreme Court has also directed the parties to lead evidence and the evidence is yet to begin, the proposed amendment can be allowed by the Court subject to hearing the Defendants and keeping all contentions of the parties open. Needless to state that any order passed by this Court will only be passed after hearing the parties in the present Writ Petition.

*8. At the joint request of learned Senior Advocates appearing for the parties, stand over to **30th January, 2023 at 02:30 p.m.**"*

3. By consent of parties Chamber Summons No.2746 of 2013 is taken up for hearing. Today, Dr. Tulzapurkar, learned Senior Advocate for Respondent No.1 (Original Plaintiff) would submit that Respondent No.1 before the Court infact had moved the Civil Court in Hyderabad by filing a substantive Petition under Section 151 of the Code of Civil Procedure, 1908 for bringing it to the notice of the said Court its substantive right and entitlement in the 15 suit flats which are the subject matter of Suit proceedings i.e. Suit No.695 of 1978 pending before the City Civil Court, Mumbai. That apart, he has also placed on record order dated 03.02.1983 allowing the said Petition wherein the issue pertaining to the subject suit flats was considered and the Petition was allowed with specific directions. He has also placed on record Judgment dated 07.09.1983 passed by the learned Civil Court in Hyderabad in Civil Revision Application No.350 of 1983, *inter alia*, taking cognizance of the consent order between the Plaintiff and the first Defendant therein and directing that for the enforceability of the agreement the Respondent No.1 is free to obtain appropriate orders in the pending Suits. In view of these two orders, the issue of maintainability of the present Chamber Summons is now not in question.

4. Next on the aspect of considering the amendment sought for by the Plaintiffs, it is seen that it pertains to challenging the family

arrangement only in respect of the subject 15 suit flats and nothing more.

5. Mr. Subramaniam has opposed the amendment on the ground that the Chamber Summons seeking amendment has been filed after a hiatus of 26 years, only in the year 2013 and the same if allowed cannot relate back to the date of filing of the Suit proceedings. He has relied upon the decision of the Supreme Court in the case of *Life Insurance Corporation of India Vs. Sanjeev Builders Private Limited and Anr.*¹ to contend that allowing such delay for taking out the Chamber Summons cannot be permitted by the Court so as to erase the issue of limitation which is a valuable right accrued in favour of the Petitioner (Defendant). Mr. Merchant, learned Advocate for Respondent Nos.4 to 6 supports the submissions of Mr. Subramaniam.

6. In the present case, it is seen that Petitioner has filed two substantive Suits namely Suit No.6907 of 1978 i.e. the present Suit and Suit No.536 of 1980. Admittedly, in Suit No.536 of 1980 similar amendment which is the subject matter of the present Chamber Summons was allowed by the Court and has been carried out by the Respondent No.1.

7. In that view of the matter, the amendment in the present Chamber Summons which is restricted only to the challenge to the

¹ 2022 SCC Online SC 1128

family arrangement in respect of the subject matter i.e. 15 flats in the Suit also needs to be allowed. However, needless to state that the objection raised by Mr. Subramaniam regarding limitation would be an issue which shall be framed and decided by the learned Trial Court as a mixed question of fact and law and shall be decided by the learned Trial Court accordingly. The issue relating to delay in filing the Chamber Summons after a hiatus of 26 years hence is directed to be framed and decided by the learned Trial Court alongwith other issues. All questions are expressly kept open in this respect / issue of both the parties before the Trial Court.

8. In the present case, the impugned order is therefore quashed and set aside.

9. Needless to state that Chamber Summons No.2746 of 2013 stands allowed with the above directions. Necessary amendment in Suit No.695 of 1978 is permitted to be carried out within a period of four weeks from today.

10. Parties shall appear before the learned Trial Court with an authenticated copy of this order.

11. With the above directions, Writ Petition is disposed.

[MILIND N. JADHAV, J.]