

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

CIVIL WRIT PETITION NO. 13855 OF 2022

Manmohan Singh Bajwa Through
POA Amanjyot Kaur

..Petitioner.

Versus

CIDCO (City and Industrial Development
Corporation of Maharashtra Ltd.) & Anr.

..Respondents

**WITH
INTERIM APPLICATION NO. 19857 OF 2022
IN
CIVIL WRIT PETITION NO. 13855 OF 2022**

Mr. Nand Lal Agrawal for Petitioner.

Mr. Vinayak Patil for Respondent No.2.

CORAM : SARANG V. KOTWAL, J.

DATE : 17 APRIL 2023

PC :

1. This writ petition challenges the order dated 23/01/2020 passed by Civil Judge, J. D. Vashi, in R.C.S. No.124 of 2018, below Exhibit-23. By the impugned order, the Petitioner's (original plaintiff) application for amendment under O.6, Rule 17 of the C.P.C. was rejected.

2. Heard Shri. Nand Lal Agrawal, learned counsel for the Petitioner and Shri. Vinayak Patil, learned counsel for the

Respondent No.2.

3. Learned counsel for the Petitioner submitted that, he had already made a reference to the payment made on 13/04/1992, 16/04/1992 and 01/02/1993 and, therefore, the proposed amendment mentioning the oral agreement entered into in the first week of April 1992 will not change the nature of the suit and it will not cause prejudice to the Defendants. He further submitted that, the proposed amendment is only elaboration of the original plaint. In the present case, the evidence of the Plaintiff is already entered and he is under cross-examination. Learned counsel submitted that when the application for amendment was made the evidence had not started, but the issues were already framed.

4. Learned counsel for the original Defendant and the Respondent No.2 herein opposed this petition. He submitted that, after he had taken a specific pleading in his written statement about the agreement between himself and one Bhuyan dated 14/08/1992, this amendment application is made by the Plaintiff to overcome this pleading. Therefore, it is quite obvious that the

Defendant will be prejudiced if this amendment is allowed.

5. I have considered these submissions and I have perused the impugned order. The impugned order mentions that, in paragraph Nos.2 to 5 of the plaint that, there was leave and license agreement whereby the Plaintiff came in actual possession of the suit property. The Plaintiff purchased the property from Bhuyan on 20/10/1992 for the sale consideration of Rs.50000/- plus loan amount and there was an agreement for sale. The date was mentioned as 20/10/1992. By way of the amendment, the Plaintiff wanted to change that period to the 'first week of April 1992'. It was argued before the Trial Court that, at the time of filing of evidence, learned counsel for the Plaintiff came to know that there was an oral agreement in the first week of April 1992 between the Plaintiff and said Bhuyan regarding purchase and sale of the suit flat for Rs.50000/-.

6. Learned Trial Judge observed that the amendment could be allowed only regarding the facts which were not in the knowledge of the Plaintiff at the time of institution of the suit, if in

spite of taking due efforts he did not have knowledge of those facts, then the amendment could have been allowed. According to the learned Trial Judge, it was not so in the present application and, therefore, the application was rejected.

7. I have perused the original plaint and the proposed amendment. In the original plaint, it was clearly mentioned that, the Plaintiff purchased the aforesaid property from Mr. B. D. Bhuyan on 20/10/1992 for sale consideration of Rs.50000/- plus loan amount in installments and an agreement for sale, general power of attorney and declaration was duly executed by said Bhuyan in favour of the plaintiff. The Plaintiff wanted to introduce the said period as 'first week of April 1992' instead of the date 20/10/1992. The written statement of the Defendant specifically pleads that Bhuyan and the Defendant No.2 executed an agreement on 14/08/1992 and the said flat was to be handed over to the Defendant No.2. Thus, date 14/08/1992 was important. As per the plaint, the date mentioned for purchase of the property by the Plaintiff from Bhuyan was 20/10/1992 which was subsequent to 14/08/1992. By the proposed amendment, the Plaintiff wanted

to put that date before 14/08/1992 and wanted to mention it as the period of 'first week of April 1992' and only the date of agreement for sale, general power of attorney and the declaration is sought to be executed on 20/10/1992. Thus, it will definitely cause prejudice to the Defendant after he had specifically pleaded about the date of 14/08/1992 regarding the agreement between the Defendant No.2 and Bhuyan. Moreover, the ground taken in the application was that the counsel for the Plaintiff came to know that there was an oral agreement in the first week of April 1992, and therefore the amendment application was made. However, there is no explanation as to if the plaintiff knew about the said oral agreement in the first week of April 1992, why it was not so mentioned in the plaint.

8. Considering all these aspects, I do not see as to why amendment to the plaint should be permitted. Consequently, the impugned order cannot be interfered with and the petition is dismissed.

9. With dismissal of the petition, the interim application is

also disposed of.

10. Learned counsel for the Petitioner states that the Plaintiff is senior citizen of United States of America and he has specifically come to give evidence in this suit. He is already under cross-examination, therefore, the Trial Court is requested to complete his evidence at the earliest, and as early as possible, before 15/05/2023.

11. With this observation, the petition is disposed of.

(SARANG V. KOTWAL, J.)