

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
INTERIM APPLICATION NO.707 OF 2022
IN
SUIT NO.393 OF 2014**

UCO Bank	...	Applicant/Plaintiff
versus		
Supreme Infra-structure India Ltd.	...	Defendant

Mr. Girish Thanvi i/by SSP Legal for Plaintiff.
Ms. Nuety Thakkar i/by Mr. Tushar Goradia for Defendant.
Ms. Swapna Gokhale for Respondent No.3.
Mr. Karl Tamboly with Mr. Darshit Dave, Ms. Viloma Shah i/by AVP Partners for Applicant in IAL 29721 of 2022.

CORAM: N.J.JAMADAR, J.

DATE : 23 JANUARY 2023

P.C.

1. The Plaintiff has preferred this Application seeking permission to amend the Plaint.
2. The Plaintiff is a Banking Company constituted under Banking Companies (Acquisition and Transfer of Undertakings Act, 1970). In July 2010, the Plaintiff had published an advertisement seeking expression of interest from the persons who were owners of the suitable premises to relocate its Powai, Mumbai Branch. The Defendant had submitted a bid and offered the suit premises. The Defendant's bid was accepted by the Plaintiff vide letter dated 21 August 2010. The Defendant had, thus, agreed to execute a Lease Deed for a period of 15 years. The

Plaintiff was put in possession of the suit premises on 18 September, 2010. The Defendant, however, proceeded to wrongfully terminate the agreement vide legal notice dated 14 December 2012. Hence, the suit for declaration that the agreement to lease is valid, subsisting and binding and a decree for specific performance of the contract contained therein and the consequential reliefs.

3. The Plaintiff avers that, in the meanwhile, during the pendency of the suit, it transpired that the Defendant has sold the suit property to M/s. Srei Infrastructure Finance Ltd. (Srei) and the lease agreement has, in turn, been executed by Srei in favour of Defendant No.1. The said lease agreement, inter alia, provides that the Defendant shall not assign and/or sub-let, sub-lease the said premises or any part thereof without prior consent in writing of Srei.

4. Suppressing the said fact, the Defendant has obtained Consent Minutes of Order dated 7 May 2018. It is, therefore, necessary to implead Srei as a party Defendant to the above Suit and incorporate requisite averments in the plaint and also seek an additional prayer that Srei is liable to perform obligation incurred by the Defendant.

5. An Affidavit in Reply is filed on behalf of the Defendant. It is, inter alia, contended that the proposed amendment would change the nature of the suit and the prayer sought to be incorporated by the proposed amendment would be barred by limitation.

6. I have heard the learned Counsel for the parties.
7. It would be contextually relevant to note that Seri filed Interim Application (L) No.29721 of 2022 seeking a declaration that Consent Minutes of Order dated 7 May 2018 are fraudulent, non-east, void and did not bind the Applicant and to direct the Plaintiff to pay all the future rentals to Seri, instead of the Defendant.
8. Indisputably, the Defendant had transferred the property to Seri, during the pendency of the suit, by executing a sale deed for a consideration of Rs.40 Crores. On 1 July 2015, a lease deed was executed by Seri in favour of the Defendant. Prima facie, title to the suit premises vests in Seri with all incidences of ownership. In the circumstances, the proposed Defendant No.2 has a direct interest in the subject matter of the suit. Interestingly, proposed Defendant No.2 does not resist its impleadment as a party Defendant to the Suit. The resistance comes from the Defendant.
9. Having regard to the subsequent developments, in my view, the proposed amendment is necessary for the determination of all the questions in controversy between the parties. I am unable to accede to the submission on behalf of the Defendant that the impleadment of Seri would change the nature of the suit. It is trite specific performance can be sought against a person claiming through the transferor. In any event, the Defendant would be at liberty to raise all the defence including the bar of limitation. I am, therefore, persuaded to allow the Application.

Hence, the following order :

ORDER

- (i) The Application stands allowed in terms of prayer clauses (a) and (b).
- (ii) The Plaintiff shall carry out necessary amendment in the plaint in accordance with the Schedule of amendment appended to the Plaint within a period of three weeks and serve a copy of the amended Plaint on the Defendant and newly impleaded Defendant within a period of four weeks thereafter.
- (iii) The Defendant is at liberty to file additional written statement within a period of 30 days of being served with the amended plaint.
- (iv) The newly added Defendant may file written statement within a period of 30 days of being served with a copy of the writ of summons.
- (v) Costs in cause.
- (vi) The Application stands disposed.

(N.J.JAMADAR, J.)