



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO.2099/2023

PETITIONERS :
Original Plaintiffs

1. Pravinchandra s/o Tarachand Khatri
(Since Dead through his L.Rs.)

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1A. Hemant s/o Pravinchandra Khatri,
aged 43 years, Occupation : Business,
Resident of 13, Patel Nagar, Sai Nagar,
Tq. & Dist. Amravati.

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1B. Sau. Trupti w/o Tejal Khatri,
aged 36 years, Occupation : Business,
Resident of 603, Regent Park,
Nallagandala Bypass Road,
Serilingampalli, Hyderabad – 500019.

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2. Sau. Geeta w/o Pravinchandra Khatri,
aged 63 years, Occupation : Housewife.

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3. Jayant s/o Pravinchandra Khatri,
aged 41 years, Occupation : Advocate

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4. Sau. Sandhya w/o Jayant Khatri,
aged 36 years, Occupation : Housewife.

Nos.1 to 4 resident of 13, Patel Nagar,
Sai Nagar, Tq. & Dist. Amravati.

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...VERSUS...

RESPONDENTS :
Original
Defendants

1. Hemantkumar s/o Ramnivas Vyas,
aged 65 years, Occupation : Business.

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2. Prashant s/o Hemantkumar Vyas,
aged 44 years, Occupation : Business.

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3. Sau. Vidya w/o Hemantkumar Vyas,
aged 62 years, Occupation : Housewife.

4. Sau. Kiran w/o Prashant Vyas,
aged 36 years, Occupation : Housewife.

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All 1 to 4 residents of Dotiwala Court,
Behind D Mart, Near Biyani Chowk,
Camp, Tq. & Dist. Amravati.

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Mr. S.S. Sitani, Advocate for petitioners
Mr. M.G. Bhangde, Senior Advocate assisted by Ms Shajal Sarada, Advocate for
respondent nos.1 to 3
Mr. J.J. Chandurkar, Advocate for respondent no.4

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CORAM : AVINASH G. GHAROTE, J.

Date of reserving the judgment : 06/10/2023

Date of pronouncing the judgment : 03/11/2023

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J U D G M E N T

1. Heard Mr. S.S. Sitani, learned counsel for the
petitioners; Mr. M.G. Bhangde, learned Senior Counsel for the
respondent nos.1 to 3 and Mr. J.J. Chandurkar, learned counsel for
the respondent no.4. Rule. Rule made returnable forthwith. Heard
finally with the consent of the learned counsels for the rival parties.

2. The petitioners question the order dated 20/02/2023
passed below Exh.110 an application under Order VI Rule 17 of the
Code of Civil Procedure (for short hereinafter, "CPC") as applicable

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to Commercial Courts by which the said application has been rejected (pg.113).

3. Mr. Sitani, learned counsel for the petitioners/plaintiffs submits that the proposed amendment seeks to bring on record the events which had taken place consequent to the filing of the suit inasmuch as during the pendency of the litigation the respondent nos.1 to 4, have sold various plots in the suit properties to various persons, which position needs to be brought on record, so that the suit can be decided in light of the same and a proper effective decree could be passed. It is contended that merely because this Court by the order dated 27/01/2023 in Commercial Appeal No.2/2019 had while deciding the same directed Special Civil Suit No.2/2016 to be restored to file and to be decided within a particular period of time that by itself would not deprive petitioners/plaintiffs from bringing the events, which have, come to the knowledge of the petitioners/plaintiffs, consequent to the filing of the suit, on record. It is also contended that while deciding an application for amendment, the learned Commercial Court could not have decided on the merits of the application by holding that the challenge to the transactions claimed was beyond a period of three years, inasmuch

as the date of knowledge, vis-a-vis those transactions would be the material factor to be taken into consideration for deciding the question of limitation which could only be done upon evidence being led. It is further submitted that the provisions of Order VI Rule 17 of CPC insofar as they are applicable to a commercial suits, do not indicate a different approach to be adopted, other than what has been held in respect thereof, otherwise. Learned counsel for the petitioners relies upon *Life Insurance Corporation of India Vs. Sanjeev Builders Private Limited and another* 2022 SCC OnLine 1128; *Anil s/o Ramsing Bilawar and others Vs. Anita w/o Gopal Kadam* [Writ Petition No.7721/2019 decided on 06/08/2021]; *Black Diamond Trackparts Pvt. Ltd. and others Vs. Black Diamond Motors Pvt. Ltd.* 2021 SCC OnLine Delhi 3946 in support of his submissions.

4. Mr. Bhangde, learned Senior Counsel for the respondent nos.1 to 3 while supporting the impugned order contends that since the impugned order is, on an interlocutory application, the same principles as are applicable while deciding a revision under Section 115 of CPC will have to be held applicable and unless gross failure of justice is found the amendment ought not to be permitted.

It is also contended that the proposed amendment is not necessary for deciding the real controversy between the parties, for which he relies upon *Deep Industries Limited Vs. Oil And Natural Gas Corporation Limited and another (2020) 15 SCC 706* and *B.K. Muniraju Vs. State of Karnataka and others (2008) 4 SCC 451*. It is also contended that since the sales were *lis pendens*, there was no question of adding any third parties to the commercial suit as they were neither proper or necessary parties on the count that the decree which may be passed would be equally binding upon them.

5. The factual position in the instant matter, as spelt out from the record is as under :-

(A) The petitioners have instituted a suit for dissolution of partnership, winding up of business, settlement of accounts and for recovery of plaintiffs' share in the partnership property of rupees nine crores, which came to be registered as Special Civil Suit No.156/2014 and was listed before the Civil Judge Senior Division, Amravati. The same was converted to a commercial suit and was registered as Commercial Special Civil Suit No.2/2016 on 30/8/2016. On 07/02/2018 the suit came to be dismissed for non-appearance of the plaintiffs on the day fixed

for filing of affidavit-evidence and though an application for restoration was filed on the same day, the same was rejected.

- (B) The petitioners/plaintiffs on 12/03/2019 filed Misc. Civil Application No.63/2018 seeking restoration which also came to be dismissed vide order dated 12/03/2019, being aggrieved by 5 which the petitioners had preferred an appeal under Section 13 of the Commercial Courts Act, 2015 before this Court being Commercial Appeal No.2/2019 which came to be allowed by the order dated 27/01/2023, restoring the suit with the interlocutory order of *status quo* and a direction to dispose of 10 the suit within 6 months. It was also directed that in case, considering the passage of time, if any amendment was required, the necessary application shall be moved within the next three working days, to which, reply would be filed within the next three days and final order be passed within a week 15 from the date of filing of reply. It was also directed that after the pleadings are complete the evidence shall be recorded, preferably on day-to-day basis and the Commercial Court shall not grant any adjournment, unless an exception case was made out and that too not exceeding three days (pg.78). 20

- (C) On 01/02/2013, the petitioners/plaintiffs filed an application for amendment seeking to bring on record that during the pendency of the suit the defendants/respondent nos.1 to 4 had sold various plots in the suit properties to various persons and in view of the public notices published in local dailies as well as the notice boards and flex site, intimation regarding the pendency of the suit, was given to one and all and therefore, the purchasers were not bona fide purchasers on account of which the sale/s in their favour was/were not binding upon the petitioners/plaintiffs. A further relief was sought that all these plots, which were sold by the defendant nos.1 to 4 be considered as the assets of the firm for the purpose of the relief claimed in the suit (pg.83). 5 10
- (D) The said application was opposed by the respondents on the above grounds. 15
- (E) The learned Commercial Court, by the impugned order, as indicated above has rejected the application.

6. What is material to note is that the provisions of Order VI Rule 17 of CPC insofar as they are made applicable to the commercial suits, do not indicate any change of approach, other 20

than what is mandated for Regular/Special Civil suits. Thus, the principles which would govern the amendments in regular suits would also govern the amendments in commercial suits.

7. It is also material to note that the suit was not initially instituted as a commercial suit, but was later on converted to one. 5

8. That apart, the liberty as given by the learned Division Bench of this Court in Commercial Appeal no.2/2019 while deciding the same by the order dated 27/01/2023, that in case, considering the passage of time if any amendment was required, the necessary application shall be moved within the next three working days, to which reply would be filed within the next three days and final order be passed within a week from the date of filing of reply, would also indicate that liberty to file an application for amendment considering the subsequent events which had transpired, during the intervening period was also granted by the learned Division Bench itself, while deciding the Appeal. 10 15

9. The need for bringing the subsequent events on record, is always felt to be necessary, on account of the Court, taking them into consideration for passing a proper and effective decree, otherwise the decree many a times turns out to be a mere paper 20

decree, becoming incapable of execution, on account of the subsequent events not having been taken into consideration. In ***Sanjeev Builders Private Limited*** (supra) parameters in respect of Order VI Rule 17 of CPC have been laid down (see para 71), wherein it has been held that the approach of the Court in respect of an application for amendment ought to be liberal and if the amendment is necessary for deciding the lis, it ought to be allowed. 5

10. Though it is contended by Mr. Bhangde, learned Senior Counsel that the impugned order is an interlocutory one and therefore ought not to be interfered with, this proposition, has to be considered in light of the liberty already granted by the learned Division Bench to file an application for amendment to the petitioner while deciding Commercial Appeal No.2/2019, which order ought to prevail. 10

11. The contention that the proposed amendment is not necessary for deciding the real controversy between the parties is clearly misconceived for by the proposed amendment, the transfers affected in respect of the suit properties by the respondents, are being brought on record and a relief is being claimed that while deciding the claim and right of the petitioners these transactions be 15 20

taken into account, which is a position which will be necessarily be required to be taken into consideration by the Court for passing an effective decree.

12. The principle of *lis pendens*, does not always have the statutory effect for which it was enacted, for on occasions, on account of third party interests created during the pendency of the lis, even after getting a decree, the Decree Holder is required to face litigation at the behest of such transferees, who by raising one objection or the other, have a tendency to postpone the execution of the decree, considering which, if such transferees are made parties to the suit itself, the Court is then capable of deciding the pleas raised by them, which would then bound them, effectively. 5 10

13. That apart, the learned Court below, has gone into the merits of the proposed amendment by holding that the challenge to the same is barred by limitation, without even considering the date of knowledge of these transactions to the petitioners/plaintiffs, which could only be determined on the basis of evidence which may be led. 15

14. Though *Deep Industries Limited* (supra) is relied upon by Mr. Bhangde, learned Senior Counsel for the respondents, which 20

holds that there should be minimum intervention by the Courts, the same was stated in light of the provisions of the Arbitration and Conciliation Act, 1996 and the expressed policy of minimum judicial intervention as contained therein. The factual background as indicated therein was whether the powers under Article 227 of the Constitution could have been exercised in respect of judgments allowing or dismissing First Appeals under Section 37 of the Arbitration and Conciliation Act and therefore was in a different context altogether than what is extant in the present matter. 5

15. Though Section 8 of the Commercial Courts Act, 2015, 10 creates a bar against revision or petition against an interlocutory order, that however by itself would not interdict the intervention by the High Court, when it finds that the facts merit judicial intervention and in the instant matter specifically so, in light of the order in Commercial Appeal No.2/2019 by the learned Division 15 Bench, granting liberty to the petitioners/plaintiffs to move an application for amendment considering the subsequent events. Section 8 of the Commercial Courts Act, has been considered by the learned Division Bench of the Delhi High Court in *Black Diamond Trackparts Pvt. Ltd.* (supra), wherein it has been held that word 20

‘petition’ in Section 8 of the Commercial Courts Act, is not and could not have been with reference to a petition under Article 227 of the Constitution and is with reference to a revision application/revision petition only and therefore would not bar the exercise of the jurisdiction of this Court under Article 227 of the Constitution of India. I, am in complete agreement with what has been said in ***Black Diamond Trackparts Pvt. Ltd.*** (supra), for holding otherwise, would amount to a statutory provision creating an embargo upon the constitutional provisions, which position cannot be countenanced in law.

16. Similarly, reliance upon ***B.K. Muniraju*** (supra), which lays down the parameters for exercise of the extraordinary jurisdiction of this Court, by holding that whether it is a writ of certiorari or the exercise of supervisory jurisdiction, none is available to correct mere errors of fact or of law unless the following requirements are satisfied: (i) the error is manifest and apparent on the face of the proceedings such as when it is based on clear ignorance or utter disregard of the provisions of law, and (ii) a grave injustice or gross failure of justice has occasioned thereby and that the High Court in exercise of certiorari or supervisory jurisdiction

will not convert itself into a Court of appeal and indulge in re-appreciation or evaluation of evidence or correct errors in drawing inferences or correct errors of mere formal or technical character, this, however, in the instant case would not come in the way of the petitioners/plaintiffs being permitted to amend the suit 5 for bringing the subsequent events on record. It would be a travesty of justice for the respondents/defendants to make unwarranted alienation of the suit properties during the pendency of the suit and when these facts are sought to be brought on record, to contend that it is impermissible to do so. 10

17. In view of the above discussion, I am unable to sustain the impugned order passed by the Court below. The same is hereby quashed and set aside and the application for amendment filed by the petitioners/plaintiffs is hereby allowed.

18. Rule is made absolute in the above terms. In the 15 circumstances, there shall be no order as to costs.

(AVINASH G. GHAROTE, J.)