



**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

**RESERVED ON : 07.06.2023**

**PRONOUNCED ON : 21.06.2023**

**CORAM:**

**THE HONOURABLE MS.JUSTICE R.N.MANJULA**

**Application Nos.427 & 337 of 2022**  
**in C.S.No.541 of 2007**

Vaata Infra Limited,  
Registered Office at  
No.7, 11<sup>th</sup> Avenue,  
Ashok Nagar,  
Chennai - 600 083.

...

Applicant /  
Plaintiff  
[in both Applications]

**versus**

The Repatriates Co-operative Finance and  
Development Bank Ltd.,  
(Repco Bank Ltd),  
REPCO Tower, No.33,  
North Usman Road,  
Chennai - 600 017.

...

Respondent /  
Defendant  
[in both Applications]

**PRAYER in A.No.427 of 2022** : Application filed under Order XIV Rule 8 & Order 7 Rules 14(3) of Original Side Rules read with Section 151 of Code of Civil Procedure, praying to permit the applicant / plaintiff to file 73 documents more fully described in the schedule as additional documents.



**PRAYER in A.No.337 of 2022** : Application filed under Order XIV Rule 8 of Original Side Rules read with Order 6 Rules 16 & 17 of Code of Civil Procedure, praying to amend the plaint as morefully set out in the schedule hereunder (i) by adding new paragraphs 19 to 54 and by modifying para 19 and renumbering the existing said para 19 as para 55, (ii) by amending prayer (i), (iii) to further amend the plaint by adding new prayer (ia) for alternate relief for claim of refund of the payments made to the defendant, amounting to a sum of Rs.7,49,96,209/- and together with compensation for loss of interest amounting to Rs.8,40,94,286/- both aggregating to Rs.15,90,90,495/- as on 30.06.2007 and together with further *pendente lite* interest at 14% p.a., compounded at monthly rests from 30.06.2007 till the date of payment.

For Applicant : Mr.S.K.Srinivasan  
[in both Applications]  
For Respondent : Mr.A.Ilangovan  
[in both Applications]

**COMMON ORDER**

Application No.427 of 2022 has been filed by the applicant to file 73 additional documents. Application No.337 of 2022 has been filed by the applicant to amend the plaint. The applicant herein is the plaintiff in C.S.No.541 of 2007.

2. Heard the learned counsels for the applicant / plaintiff and the respondent / defendant and perused the materials available on record.

**Applications in brief:-**



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**3.** The suit has been filed by the applicant / plaintiff for specific performance, permanent injunction, declaration and directions; during the pendency of the suit, the applicant came to know from the judgment of this Court dated 03.12.2019 made in CrI.R.C.Nos.1322, 1324 and 1328 of 2019 that the Managing Director of the respondent / defendant Bank was charged for misusing his official position for granting unauthorised loans; the applicant was also apprehensive of similar acts of cheating and misappropriation which could have been perpetrated by the defendant against the plaintiff and hence the plaintiff made a thorough study from the above perspective and incidentally he caught hold of several such acts against him.

**3.1.** The suit property was in possession of the plaintiff as its lessee, the defendant initiated some recovery proceedings against the lessor and in which the suit property was brought for sale; in the said proceedings, the defendant had himself purchased the suit property in an auction on 16.04.1999 under a Sale Certificate dated 03.12.1999; when the plaintiff tried to dispossess the plaintiff in pursuant to the above sale, the plaintiff filed a suit in C.S.No.306 of 1999 by questioning the sale.



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**3.2.** During the pendency of the suit, the plaintiff and the defendant entered into some understanding and in which the plaintiff had agreed to purchase the property for a total sale consideration of Rs.6,60,00,000/-; after paying an advance of Rs.1,00,00,000/- and he agreed to pay interest at the rate of 17% balance sale consideration; on 24.03.2004 a sale agreement was entered into between the plaintiff and the defendant and in which the defendant had acknowledged that he received a sum of Rs.1,85,00,000/-; the balance sale consideration of Rs.4,75,00,000/- was agreed to be paid by offering the secured non-convertible debentures; the plaintiff was also in the possession of the property.

**3.3.** The terms of sale agreement have been almost completed except for the issue of non-convertible debentures and the registration of the sale deed; a Memorandum of Understanding was entered into between the plaintiff and the defendant on 17.06.2004 in this regard; as per the said agreement, the plaintiff has to issue a Letter of Allotment for the issue of 475 members of 14% secured non-convertible debentures and after receiving the Letter of Allotment, the defendant has to execute the sale deed.



**3.4.** Even after receiving the Letter of Allotment, the defendant failed to execute the sale deed; all of a sudden, the defendant issued a legal notice on 06.06.2007 to terminate the agreement dated 24.03.2004 and he called upon the plaintiff to hand over the vacant possession; the plaintiff issued a reply notice and thereafter filed the suit for specific performance; the total payments made by the plaintiff was to a total sum of Rs.7,40,60,998/-.

**3.5.** Hence the plaintiff was advised to claim that the total amount of Rs.7,49,96,209/- paid by him to the defendant should be treated as advance and to seek a compensation of Rs.8,40,94,286/- towards loss of interest along with the above said advance amount and altogether a sum of Rs.15,90,90,495/-. The purchase consideration of Rs.6,60,00,000/- should be adjusted towards the total demand and hence the defendants are liable to pay a balance sum of Rs.9,30,90,495/-.

**3.6.** In a suit for specific performance, the plaintiff is entitled to claim the refund of the money paid by him along with the compensation as an alternate relief; the plaintiff got the information regarding the arbitration awards and an order for the sale of the suit property in execution of the



same; hence the plaintiff has to amend the plaint as stated in the schedule and also need to produce 73 additional documents on his side; as per Section 21 of the Specific Relief Act, the plaintiff is entitled to include the relief of refund of compensation at any stage of the proceedings.

4. The respondent / defendant has filed his counter by stating that the suit filed by the applicant / plaintiff is not maintainable; after having known the prayer in the plaint is inadmissible in law, the plaintiff has come up with the present application with an alternate prayer after 15 years and the same is barred by limitation; the applicant / plaintiff sought to produce 73 additional documents which are not at all necessary to adjudicate the issues involved in the present suit and they are brought only in order to fill up the lacunae in the case of the plaintiff and that too after 15 years; the applicant / plaintiff company itself is not in existence and hence the present application is liable to be dismissed; the plaintiff who is a defaulter, in order to cover up his misdeeds and to resist the possession from being taken by the respondent / defendant in terms of agreement, he had come up with a false case; unless any specific pleadings is raised by the plaintiff in his



plaint, subsequent amendment and production of documents cannot be permitted; the amendment as prayed by the plaintiff would change the character of the suit and it is barred by law; the plaintiff who is a defaulter cannot alter the prayer to suit his convenience.

**4.1.** Section 21 of the Specific Relief Act cannot be made applicable to the present case for the simple reason that it is the applicant / plaintiff, who had acted contrary to the terms of the agreement entered into between the parties; hence they are not entitled for discretionary relief under Section 21(5) of the Specific Relief Act; the respondent/defendant sustained huge loss due to the non-compliance of the terms of the contract by the applicant/plaintiff and his illegal occupation in the premises; the applicant is enjoying the rental income from the property by being in illegal occupation without any right.

**4.2.** After 15 years from the date of filing of the suit, the present application has been filed with *malafide* intention to grab money from the respondent / defendant without any legal right; the applicant / plaintiff is



squatting over the property belonging to the respondent / defendant and causing huge loss of the public money; 73 additional documents are in no way connected with the case and they are not necessary to resolve the issue of the applicant / plaintiff; the applicant / plaintiff is trying to introduce a new case other than that was originally pleaded by him; the documents produced are inadmissible and they cannot be marked as documents. Since the applications filed by the applicant / plaintiff lack *bonafideness*, they are liable to be dismissed.

5. The learned counsel for the applicant / plaintiff submitted that in a suit for specific performance, it is open to the plaintiff to claim the relief of refund along with the compensation; since the plaint has been filed within the period of limitation, the alternate prayer can be prayed at any time by bringing an application for amendment; the application has been filed within the period of limitation to amend the plaint for seeking alternate relief.

6. The main thrust of the submission of the learned counsel for the plaintiff is that as per Section 21 of the Specific Relief Act, the plaintiff



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is entitled to compensation for breach of any performance. Since it is a statutory relief open to the plaintiff, he is entitled to amend the plaint suiting to the relief. It is further submitted that in view of the amendment now sought, the plaintiff has to prove the same and hence he has to produce the additional documents to substantiate his case.

7. The learned counsel for the respondent / defendant submitted that the suit itself is not maintainable and the same has been filed just in order to squat up on the property already sold in the public auction; the amendment now sought to be made is with the intention to delay the proceedings to the extent possible and thereby retain the possession of the property with the plaintiff himself; the additional documents sought to be produced are in no way related to the case and it is just to divert the attention of the Court; most of the documents sought to be produced are irrelevant and inadmissible in evidence and hence they cannot be received.

8. The applicant / plaintiff has filed the suit by pleading various cause of actions including the alleged agreement dated 24.03.2004 entered



into between the plaintiff and the defendant by which the property was agreed to be sold. By making the above submission along with the submission with regard to the payments alleged to be made by the plaintiff, the plaintiff has sought the relief of specific performance against the defendant to execute a registered sale deed in respect of the suit property after receiving balance sale consideration of Rs.4,75,00,000/- along with other reliefs.

9. As per Section 21 of the Specific Relief Act, the plaintiff is entitled to the relief of claiming compensation as an additional / alternate relief in a suit filed for specific performance. For the sake of convenience, Section 21 of the Specific Relief Act is extracted as under:-

***“21. Power to award compensation in certain cases.- (1) In a suit for specific performance of a contract, the plaintiff may also claim compensation for its breach, either in addition to, or in substitution of, such performance.***

***(2) If, in any such suit, the Court decides that specific performance ought not to be granted, but that there is a contract between the parties which has been broken by the defendant, and that the plaintiff is entitled to compensation for***



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*that breach, it shall award him such compensation accordingly.*

*(3) If, in any such suit, the Court decides that specific performance ought to be granted, but that it is not sufficient to satisfy the justice of the case, and that some compensation for breach of the contract should also be made to the plaintiff, it shall award him such compensation accordingly.*

*(4) In determining the amount of any compensation awarded under this section, the Court shall be guided by the principles specified in section 73 of the Indian Contract Act, 1872 (9 of 1872).*

*(5) No compensation shall be awarded under this section unless the plaintiff has claimed such compensation in his plaint:*

*Provided that where the plaintiff has not claimed any such compensation in the plaint the Court shall, at any stage of the proceeding, allow him to amend the plaint, on such terms as may be just, for including a claim for such compensation.*

*Explanation.- The circumstance that the contract has become incapable of specific performance does not preclude the Court from exercising the jurisdiction conferred by this section.”*



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**10.** In view of the above position, there cannot be any disagreement about the applicant / plaintiff's entitlement to claim the relief of refund along with the compensation in a suit for specific performance. It is submitted by the learned counsel for the respondent / defendant that the applicant / plaintiff had chosen to seek the said relief after 15 years from the date of filing of the suit and hence it is barred by limitation and by way of introducing the amendment, the applicant / plaintiff attempts to change the character of the suit and it goes to the root of the case. The suit has been filed in the year 2007 by alleging a cause of action arose out of an agreement entered into between the parties.

**11.** Had the suit been filed for recovery of money and if the plaintiff intends to introduce certain amendments by enhancing the relief on the basis of some other transaction between the same parties, then there is a possibility that the point of limitation might arise depending on the time and type of the transaction. But in the case in hand, as stated already, the suit has been filed for the relief of specific performance and in which the



plaintiff intends to seek the alternate relief of refund of advance amount along with the compensation also.

**12.** It is needless to add that in a suit for specific performance, if the plaintiff proves his case, the Court at its discretion grant an equitable relief of refund of compensation instead of a relief for specific performance. But when the applicant / plaintiff seeks various reliefs including the alternate relief along with compensation, it cannot be said that the relief with regard to compensation is barred by limitation. Even for some extraneous reasons if the defendant intends to raise the point of limitation, that can be made and dealt as an issue in the suit itself by allowing the amendment. It is apparent that Section 21(5) of the Specific Relief Act permits the plaintiff to amend the suit for the relief of compensation at any stage of the suit.

**13.** There is a fundamental difference between an alternate relief and an additional relief. So far as the additional relief is concerned, it can be either independent or consequential to the main relief. The consequential relief always has its cause of action which was available for seeking the



main relief. Additional relief would have a distinct cause of action and hence there is a larger possibility that those reliefs might suffer limitation.

An alternate relief is a relief dependant on the main relief. Alternate reliefs are normally granted to the plaintiff who could prove his case, but on some equitable considerations the Court deems fit to grant the alternate relief instead of the main relief claimed. In other words, the alternate reliefs can be granted only in lieu of the main relief.

14. The compensation contemplated under Section 21 of the Specific Relief Act can be sought or granted as an additional relief along with the main relief for specific performance or an alternate relief for specific performance. If the plaintiff could prove that his suit filed for specific performance and the said reliefs is within a period of limitation, it is applicable to the alternate relief claimed in lieu of the main relief also. In such cases, the impact of limitation with regard to the alternate relief cannot be different. And the same logic applies even if the plaintiff does not choose to claim an alternate relief, but the same is granted by the court *suo motu* as an alternate relief or as an additional relief within the meaning of Section 21 of the Specific Relief Act.



**15.** Since the plaintiff has endeavoured to amend the plaint only in the line of seeking an alternate relief of refund along with the compensation, much ado can not be made on the point of limitation and that too in the application filed for amendment. However the defendant is at liberty to raise such contentions while availing the opportunity to file additional written statement.

**16.** So far as the additional documents are concerned, the defendant is at liberty to raise his objections, if the documents are found to be not relevant or not proved. Since the plaintiff has stated that the additional documents are relevant to his prayer for alternate relief sought by him, in the interest of justice, the application to receive additional documents should be allowed subject to proof and relevancy.

**17.** In view of the above stated reasons, amendment application in A.No.337 of 2022 stands allowed. The application in A.No.427 of 2022 to receive additional documents is also allowed subject to proof and relevancy.

**21.06.2023**



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Speaking order

Index : Yes

Neutral Citation : Yes

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Application Nos. 427 & 337 of 2017  
in C.S.No. 541 of 2017





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Application Nos.427 & 337 of 2022  
in C.S.No.541 of 2007



**R.N.MANJULA, J.**

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**Pre-Delivery Common Order made in**  
**Application Nos.427 & 337 of 2022**  
**in C.S.No.541 of 2007**

**21.06.2023**  
**[1/2]**