



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

910 WRIT PETITION NO. 3975 OF 2024

SHAKIR SHAFI SAYYAD & ANOTHER

VERSUS

UMAR FARUKH AKHTAR SHAIKH

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Advocate for the petitioners : Adv. Majit S. Shaikh

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CORAM : ARUN R. PEDNEKER, J.

DATE : 17.04.2024

P.C. :

- 1] Heard the learned counsel for the petitioners.
- 2] The respondent – plaintiff filed Special Civil Suit No.136 of 2022 for specific performance of the contract. The petitioners are original defendants in the said suit. Thereafter, the petitioner – defendants filed written statement in the said suit. The trial Court framed the issues below Exh.22. The plaintiff filed affidavit in chief below Exh.29 as such after filing of the affidavit, the cross objection of plaintiff witness no.1 is also partly completed. After commencement of the trial, plaintiff filed an application below Exh.57 under Order VI Rule 17 seeking

amendment in the plaint. The trial Court, by order dated 19.10.2023, allowed the application for amendment and the plaintiff was also directed to carry out the amendment within 7 days. Thereafter on 07.11.2023 the plaintiff filed an application for extension of time to carry out the amendment as the plaintiff failed to carry out the amendment within stipulated period. The said application is strongly opposed by the petitioners. By the order dated 08.11.2023, the trial Court has allowed the application below Exh.61 thereby extended the time to carry out the amendment subject to cost of Rs.2000/-. Against the said order, the present writ petition is filed.

3] The learned counsel for the petitioners contends that in view of proviso to Section 6 Rule 17 of Code of Civil Procedure, the application for amendment is not tenable. In view of Section 22 (2) of the Specific Relief Act, the amendment is allowed by the trial Court. The learned counsel for the petitioners relies upon the judgment in the case of **Vidyabai & others Vs. Padmalatha & another**

reported in (SC) Law Finder Doc ID # 179211 [2009 (1) ALL MR 471] to contends that the pleadings should not be amended in view of the Order 6 Rule 17 proviso after the commencement of the trial and presently the suit is at the stage of recording of the evidence of plaintiff. In the case of **Vidyabai [supra]**, the Hon'ble Supreme Court has held in para No.14 as under :

14. It is the primal duty of the court to decide as to whether such an amendment is necessary to decide the real dispute between the parties. Only if such a condition is fulfilled, the amendment is to be allowed. However, proviso appended to Order 6, Rule 17 of the Code restricts the power of the court. It puts an embargo on exercise of its jurisdiction. The court's jurisdiction, in a case of this nature is limited. Thus, unless the jurisdictional fact, as envisaged therein, is found to be existing, the court will have no jurisdiction at all to allow the amendment of the plaint.

4] The learned counsel for the petitioners submits that since the proceedings are at the stage of evidence, the amendment cannot be allowed.

5] Having considered the submissions of the learned counsel for the parties. Undisputedly, the suit is

filed for specific performance of the contract. In terms of Section 22 (2) of the Specific Relief Act, the prayers for refund of earnest money can be made at any stage of the suit. The Hon'ble Supreme Court in the case of **Manickam @ Thandapani & Anr. Vs. Vasantha** reported in **2022 LiveLaw (SC) 395** while interpreting Section 22 (2) of the Specific Relief Act, has observed at para no.26 as under :

26. The matter can be examined from another angle as well. Section 22(2) of the Act, though is worded in negative language, "no relief under clause (a) or clause (b) of sub-section (1) shall be granted by the court unless it has been specifically claimed", but the proviso takes out the mandatory nature from the substantive provision of sub-section (2) when the plaintiff is allowed to amend the plaint on such terms as may be just for including the plaint for such relief "at any stage of the proceeding". "At any stage of the proceeding" would include the proceeding in suit or in appeal and also in execution. The proviso to sub-section (2) of Section 22 of the Act contemplates that the Court shall, at any stage of the proceedings, allow the plaintiff to amend the plaint on such terms as may be just for including a claim for such relief. The said proviso makes the provision directory as no penal consequences follow under sub-section (2) of Section 22. Therefore, sub-section (2) of Section 22 is a rule of prudence to ask for possession "in an appropriate case". The appropriate case would not include a suit for specific performance simpliciter but may include a suit for partition or a suit when the decree is to be executed against a transferee. Subsection (2) cannot be said to be a mandatory provision as the power to claim relief at any stage of the proceeding makes

sub-section (2) directory. Sub-section (2) is a matter of procedure to avoid multiplicity of proceedings. The procedural laws are handmaid of justice and cannot defeat the substantive rights. Reference may be made to M/s. Ganesh Trading Co. v. Moji Ram wherein it was held as under:

"2. Procedural law is intended to facilitate and not to obstruct the course of substantive justice. Provisions relating to pleadings in civil cases are meant to give to each side intimation of the case of the other so that it may be met, to enable courts to determine what is really at issue between parties, and to prevent deviations from the course which litigation on particular causes of action must take."

6] Section 22 (2) of the Special Relief Act, 1963 is
as under :

"22. Power to grant relief for possession, partition, refund of earnest money, etc. –

(2) No relief under clause (a) or clause (b) of sub-section (1) shall be granted by the court unless it has been specifically claimed:

Provided that where the plaintiff has not claimed any such relief 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 relief.

7] Thus, the Hon'ble Supreme Court in the case of **Manickam @ Thandapani [supra]** has held that 'at any stage of the proceeding' would include the proceeding in suit or in appeal and also in execution. The amendment in

the plaint can be allowed under Section 22 (2) of the Specific Relief Act to claim ancillary relief. Hence, the present writ petition is dismissed.

[ARUN R. PEDNEKER]
JUDGE

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