

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

FIRST APPEAL NO.1631 OF 2024

Jaikrit Manwar Rawat

... Appellant

V/s.

Ralhan Developers

... Respondent

Ms. Mahak Bookwala-Shetty and Mr. Aditya Kavale i/by Zohair & Company for
the Appellant.

Mr. Dipesh A. Jain i/by A. V. Jain Associates for the Respondent.

CORAM : ARIF S. DOCTOR, J.

DATE : 11TH DECEMBER 2024

P.C. :

1. Since the issue which arise for determination in the captioned
First Appeal is limited, the First Appeal by consent of Learned Counsel for the
parties was taken up for disposal at the admission stage.

2. The First Appeal impugns a part of the Judgement and Order
dated 21st January 2014 (*'Impugned Judgement'*) passed by the City Civil Court,
Mumbai by which the City Civil Court had, though decreed the Suit filed by the
Appellant, had rejected the Appellant's Application for amendment of the Plaint.

3. Ms. Bookwala-Shetty, Learned Counsel for the Appellant at the outset invited my attention to the prayers in the Complaint and pointed out that while the Appellant had sought specific performance the Complaint also in the alternative, sought a prayer for compensation and damages.

4. She then submitted that the Suit had proceeded *ex-parte* since the Respondent (Defendant in the Suit) had never appeared at any stage of the Suit. She then submitted that the Appellant, on realizing that the decree of specific performance might possibly stand frustrated, had prior to the passing of the Order moved an Application seeking only to add the words “*in addition to*” to enable the Plaintiff to also claim compensation. She then invited my attention to Section 21 of the Specific Relief Act, 1963 and pointed out that it was always open to the Plaintiff in a Suit for specific performance to claim compensation for breach of such performance in addition to specific performance. Ms. Bookwala-Shetty then submitted that it was well settled that such an amendment, as had been sought for by the Appellant, could be made at any stage of the Suit. In support of her contention, she placed reliance upon the following judgements *Jagdish Singh vs. Natthu Singh*¹, *Shamsu Suhara Beevi vs.*

1 (1992) 1 SCC 647

G. Alex and Another² and Kahini Developers Pvt. Ltd. vs. Mukesh Morarji Panchamatia and Others³

5. Basis the above, Ms. Bookwala–Shetty submitted that the Trial Court had gravely erred in rejecting the said Application, which she submitted ought to have been allowed as a matter of course. She submitted that not only had the Trial Court rejected the said Application even though (i) the law permitted such Application to be made at any stage of the Suit (iii) the Plaint already contained a prayer for compensation and (ii) the same was not even opposed, the Trial Court had also done so without giving any reasons for the same. It was thus she submitted that the present Appeal was required to be allowed.

6. Mr. Jain, Learned Counsel appearing on behalf of the Respondent opposed the Appeal since the Appellant had in the Plaint elected to opt for specific performance or claim for compensation in lieu thereof, the Appellant could not have then sought to include a claim for compensation in addition to the specific performance. He however did not dispute that the Respondent had not appeared before the Trial Court to oppose the said Application or the fact that the Trial Court had not ascribed any reasons for the dismissal of the said Application.

2 (2004) 8 SCC 569

3 2013 (3) Mh.L.J. 440

7. Thus having regard to the rival contentions and the case law upon which Ms. Bookwala-Shetty placed reliance, I find merit in the Appeal. Section 21 of the Specific Relief Act would permit the Appellant to claim compensation in certain cases. In the facts of the present case, it is not in dispute that the Plaintiff did contain a prayer seeking compensation. In these circumstances, the rejection of the said Application without any reasons is therefore in my view wholly unjustified. In my view, aside from the fact that no prejudice would be caused to the Respondent, since the Respondent had never appeared, it was incumbent upon the Trial Court to have given reasons for the rejection of the said Application. The Trial Court not having done so, in my view requires that portion of the Impugned Order to be set aside.

8. Hence I pass the following order:-

- i. The Impugned Judgement is set aside to the limited extent that it rejects the Application for amendment filed by the Appellant.
- ii. The Trial Court is directed to hear and dispose of the said Application for amendment on its own merits after issuing necessary directions for hearing.

iii. The Application for Amendment shall be heard and disposed of on its own merits uninfluenced by the observations made in the present order and/or the Impugned Judgement.

iv. It is made clear that in the event the Application for amendment is allowed, the Trial Court shall then pass further orders in the said Suit as may be deemed appropriate.

9. The Appeal is disposed of on the aforesaid terms.

(ARIF S. DOCTOR, J.)