

HARSHADA H. SAWANT
(P.A.)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.1277 OF 2024

Alankar Padaji Mhatre and Ors. .. Petitioners
Versus
Namdeo Narayan Naik and Ors. .. Respondents

WITH
WRIT PETITION NO.1278 OF 2024

Alankar Padaji Mhatre and Ors. .. Petitioners
Versus
Namdeo Narayan Naik and Ors. .. Respondents

WITH
WRIT PETITION NO.1297 OF 2024

Sunil Ramesh Bhanushali .. Petitioner
Versus
Namdeo Narayan Naik and Ors. .. Respondents

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- Mr. Narendra Walawalkar, Senior Advocate a/w. Mr. Suresh Sabrad, Mr. Amey Sawant, Mr. Pratik Sabrad and Ms. Gracy Saldunha, Advocates for Petitioners in W.P.Nos.1277/2024 and 1278/2024.
 - Mr. Jeetendra Sachhdev a/w. Ms. Pournima Sawant, Advocates for Petitioner in W.P.No1297/2024 and Respondent No.5 in W.P.Nos.1277/2024 and 1278/2024.
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CORAM : MILIND N. JADHAV, J.

DATE : FEBRUARY 02, 2024

P.C.:

1. Heard Mr. Walawalkar, learned Senior Advocate appearing for the Petitioners in Writ Petition No.1277 of 2024 and Writ Petition No.1278 of 2024, Mr. Sachhdev, learned Advocate for Petitioner in Writ Petition No.1297 of 2024 and Respondent No.5 in Writ Petition

No.1277 of 2024 and Writ Petition No.1278 of 2024.

2. Writ Petition takes exception to the impugned order dated 18.12.2023 rejecting the Application filed by the Petitioner / Plaintiff seeking an amendment under Order VI Rule 17 of the Civil Procedure Code, 1908 (for short '**CPC**') for deleting the Defendant No.5 as also one specific plot which was allotted by CIDCO in respect of the 12.5% scheme.

3. The necessity for seeking the said amendment has arisen in the peculiar facts and circumstances of the present case immediately before filing of the Application for amendment. The Plaintiffs and Defendant No.5 (assignee of the said plot) filed Consent Terms before the Trial Court which were objected by Defendant Nos.1 to 4. Filing of the Consent Terms was necessitated in view of the fact that Defendant Nos.1 to 4 had already consented to assignment of their entire right in the subject plot in favour of Defendant No.5 – Assignee.

4. Despite the said tripartite Agreement being placed on record, Defendant Nos.1 to 4 objected to the same. Considering the fact that Defendant Nos.1 to 4 had already assigned their right in respect of the subject plot in favour of Defendant No.5, their rights in the subject plot were completely extinguished. Learned Trial Court did not apply its mind to the fact that rights of Defendant Nos.1 to 4 were relinquished in the subject plot allotted by CIDCO rather what has transpired is that the Application seeking amendment for deleting the

subject plot from the array of suit properties has been dismissed by the Trial Court without considering the above admitted fact.

5. That apart, the impugned order also considered the Application for amendment of the Written Statement of the Defendant Nos.1 to 4 simultaneously in view of the aforementioned events so as to now permit including the subject plot in the counter claim filed by the Defendant. Though Mr. Walawalkar would submit that ground for effecting such an amendment to the Written Statement is on the basis of the balance unpaid consideration by the assignee to them, be that as it may, Defendant Nos.1 to 4 cannot claim a relief in its counter claim against a co-Defendant and if at all they have any claim against the assignee i.e. Defendant No.5, their remedy is to file a separate suit in the Civil Court.

6. That apart, issue raised by Defendant Nos.1 to 4 now seeking to amend their Written Statement *qua* Defendant No.5 – Assignee would be thus due to a completely different cause of action. The aforesaid question therefore requires an answer from Defendant Nos.1 to 4.

7. An arguable case has therefore been made out for issuance of notice and stay of the impugned order. The impugned order dated 18.12.2023 is stayed. Learned Trial Court is directed to stay the hearing of the suit proceedings until the present Writ Petition is heard for admission.

8. Issue notice to the Respondents. Petitioners are directed to serve the Respondents. Humdast permitted. In addition to Court's notice, Petitioners are permitted to serve the Respondents the Respondents a copy of this order and Petition and inform them about the next date of hearing by any permissible mode of service and file appropriate affidavit of service with tangible proof thereof. Respondents if desire to agitate their case shall file their Affidavit-in-Reply on the observations made in this order as also on any other ground on or before the next date. Respondent No.5 waives service.

9. Learned Advocate for Respondent No.5 would submit that he has also filed Writ Petition No.1279 of 2024 to challenge the impugned order which is the subject matter of the present Writ Petition. It is on board today.

10. Respondents are directed to remain present either themselves or through their Advocates on the next adjourned date.

11. List the Writ Petition No.1279 of 2024 alongwith Writ Petition No.1277 of 2024 and Writ Petition No.1278 of 2024 on **14th February, 2024.**

H. H. SAWANT

[MILIND N. JADHAV, J.]

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