Sunny Thote

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

INTERIM APPLICATION NO.1990 OF 2024
IN
SUIT NO. 964 OF 2018

Anand Lodha …Applicant

IN THE MATTER BETWEEN :

Anand Lodha ...Plaintiff

Versus

Shabana Vasudev Navani & Ors. …Defendants

Mr. Rahul Kamerkar a/w Ms. Aparajita Jha, Advocate for the Applicant/Plaintiff.

Mr. Aman Kacheria (Through V.C.) a/w Ms. Megha Sanghavi i/b Dhruve Liladhar & Co., Advocate for Defendant Nos.2 to 4, 8 to 10, 16 to 18, 20, 21, 33 & 34.

Mr. Yash Kataria i/by S. Mahomedbhai & Co., Advocate for Defendant Nos.5 & 6.

Mr. Jeet Gandhi, Advocate for Defendant No.13.

Mr. Cyrus Bharucha a/w Mr. Aditya Gupte, Nirav Shah i/by Little & Co., Advocate for Defendant Nos.25, 35 & 36.

Mr. Khushnumah Banerjee i/by Vidhii Partners, Advocate for Defendant No.30.

CORAM: MADHAV J. JAMDAR, J.
DATED: 30 AUGUST 2024

P.C.:

1. Heard learned Counsel appearing for the Plaintiff and learned Counsels appearing for the Defendants.

2. This Interim Application has been filed seeking permission to carry out amendment in the Suit in terms of the Schedule annexed to the Interim Application.

3. Mr. Kamerkar, learned Counsel for the Applicant/Plaintiff submitted that by the proposed amendment there is no change in the nature of the Suit. He submits that the Suit has been filed as fraud has been played on the Defendants and the reliefs are sought as more particularly prayed in the Plaint. He submits that no new relief is sought by the proposed amendment and only better particulars are given regarding the Suit claim. He relied on the decision of the Supreme Court in ***Rajesh Kumar Aggarwal v. K.K. Modi*** [1].

4. Learned Counsel appearing for the Defendants have opposed the amendment Application. It is their contention that as the amendments are pre-trial amendments, the same be allowed, however, it be clarified that the said amendments will not relate back to the filing of the Suit.

5. At the out set, it is required to be noted that the Suit was filed on 29th September 2017 and the present Interim Application seeking amendment has been filed on 14th July 2022 i.e. after a period of 4 years and 9 months. It is required to be noted that even after lapse of 4 years and 9 months or even till date i.e. after a period of about 7 years none of the Defendants have filed their written statements. Thus, in this case amendment is sought at pre-trial stage. As per the settled legal

1 (2006) 4 SCC 385

position amendment applications in the pleadings are required to be considered liberally. Thus, the Interim Application seeking amendment in the Plaint is required to be considered liberally.

6. In the light of above position, it is required to be noted that the Plaint has been filed for several reliefs including the reliefs which are sought by prayer clauses (a) to (d). The said prayer clauses are set out herein below for ready reference:

> "*a. that this Hon'ble Court be pleased* ***to declare that the transfer of the Plaintiff's shareholding in Defendant Nos.7 to 20, 23 to 29, 31 and 32 is illegal, fraudulent, void ab initio, of no legal consequence and not binding on the Parties hereto****;*
>
> *b. that this Hon'ble Court be pleased to order and direct Defendant Nos.7 to 20, 23 to 29, 31 and 32* ***to restore status quo ante*** *and to do all acts, deeds, matters and things necessary, including but not limited to signing of appropriate share transfer forms etc. to restore the Plaintiff's:*
>
> *i. 25% shareholding in Defendant No.7;*
> *ii. 33.33% shareholding in Defendant No.8;*
> *iii. 33.33% shareholding in Defendant No.9;*
> *iv. 50% shareholding in Defendant No.10;*
> *v. 50% shareholding in Defendant No.11;*
> *vi. 50% shareholding in Defendant No.12;*
> *vii. 16.66% shareholding in Defendant No.13;*
> *viii. 50% shareholding in Defendant No.14;*
> *ix. 50% shareholding in Defendant No.15;*
> *x. 20% shareholding in Defendant No.16;*
> *xi. 50% shareholding in Defendant No.17;*
> *xii. 50% shareholding in Defendant No.18;*
> *xiii. 14.28% shareholding in Defendant No.19;*
> *xiv. 50% shareholding in Defendant No.20;*
> *xv. 50% shareholding in Defendant No.23;*
> *xvi. 33.33% shareholding in Defendant No.24;*

xvii. 50% shareholding in Defendant No.25;
xviii. 32.50% shareholding in Defendant No.26;
xix. 25% shareholding in Defendant No.27;
xx. 25% shareholding in Defendant No.28;
xxi. 25% shareholding in Defendant No.29;
xxii. 50% shareholding in Defendant No.31; and
xxiii. 25% shareholding in Defendant No.32.

c. that this Hon'ble Court be pleased to declare that ***all acts, deeds, matters and things done by Defendant Nos.2 to 6 in furtherance of the transfer of the Plaintiff's shares in Defendant Nos.7 to 20, 23 to 29, 31 and 32 are illegal, void ab initio, of no legal consequence and not binding on the Plaintiff;***

d. that this Hon'ble Court be pleased to declare that the further issuance of shares after December 12, 1997 in Defendant Nos.7 to 29 and 31 and 32 are illegal and void ab initio, of no legal consequence and not binding on the Parties;"

7. In the Plaint the principle contention raised by the Plaintiff is that fraud has been played on the Plaintiff by the Defendants. The cause of action for filing Suit is set out in Paragraph No.245, which reads as under :

"*As such,* ***the Plaintiff could not have discovered the fraud of the Defendants with reasonable diligence and could not have ascertained his right to institute the present suit prior to October 2014 i.e. when the Plaintiff was first informed that his shareholding in the Subject Companies had been tampered with. Thereafter, the Plaintiff started making enquiries and only received documentation to support the information received by him sometime between June-August, 2015.*** *In the circumstances, the present suit is filed within the period of limitation*"

(Emphasis added)

Thus, the Plaintiff has stated in the Plaint that in October 2014 the Plaintiff was informed for the first time that his shareholding in the subject companies had been tampered with and thereafter the Plaintiff started inquiries and after receiving documentation, filed Suit on 29th September 2017.

8. In the above background of the matter, the Interim Application seeking amendment in the Plaint, is required to be appreciated.

9. The main contention raised by learned Counsel for the Defendants is that as the amendment sought is a pre-trial amendment, the same can be allowed, however it be clarified that the amendment will not relate back to the filing of the Suit.

10. Mr. Cyrus Bharucha, learned Counsel for the Defendant Nos.25, 35 and 36 has pointed out Paragraph Nos.45 and 46 of the proposed amendment by which Paragraph Nos.134-A and 145-A are sought to be introduced in the Plaint and submitted that the contentions raised therein are barred by limitation. He submitted that as the proposed amendment is pre-trial amendment and therefore there is no impediment in granting the amendment, still it be clarified that the amendments will not relate back to the date of filing of the Suit.

11. For appreciating the submissions of Mr. Bharucha, learned Counsel, Paragraph Nos.128 to 135 of the Plaint are relevant, which read as under:

> "*128.* ***The Defendant No.17 Company was incorporated sometime in the year 1987 by*** *the Plaintiff and Late Vasudev Navani.*
>
> *129. The Plaintiff submits that* ***the authorized share capital of the Defendant No.17 Company at the time of its formation was Rs.5,00,000/- and as of March 31, 2016 is Rs.5,00,000/- with a paid up capital of Rs.100,000/-****.*
>
> *130.* ***The Plaintiff resigned from this Company on December, 13, 1997 vide his resignation letter dated December 12, 1997. The table below sets out the initial shareholding in the said company i.e. prior to the fraudulent transfer of the Plaintiff's shares and issuance of new shares as compared with the current Shareholding of the Company (as of March 31, 2016)****:*

Initial shareholding of the Company	Shareholding post the fraudulent transfers (as of March 31, 2016)
a. Plaintiff – 1 equity share b. late Vasudev Navani – 1 equity share	a. Defendant Nos.1 - Late Vasudev Navani and 3 – 1 equity share b. Defendant Nos.1 Late Vasudev Navani and 2 – 1 equity share c. Montrose Constructions Pvt. Ltd., Defendant No.12 – 475 equity shares. d. Vallabh Properties Pvt. Ltd., Defendant No.15 – 475 equity shares.

> *A copy of the Annual Return and Balance Sheet of the Defendant No.17 Company as of March 31, 2016 is hereto annexed and marked as* ***Exhibit-X.***

*131. The above table makes it clear that **the Plaintiff is no longer shown as a shareholder of the Defendant No.17 Company; and appears to be have been transferred to Defendant No.1 - Late Vasudev Navani, 2 and 3 and/or Late Mrs. Pushpa Navani. The Plaintiff states that such transfer of his shareholding has taken place without his knowledge, authority and/or consent. Therefore, it is submitted that if any share transfer forms actually exists by which such (purported) transfer has taken place, the Plaintiff states that his signature on the same has been forged by or at the behest of Defendant Nos.1 - Late Vasudev Navani, 2 and 3 and/or Late Mrs. Pushpa Navani.***

*132. Under the circumstances, **the Plaintiff is entitled to be reinstated with his shareholding in the Defendant No.17 Company.** Defendant Nos.1 - Late Vasudev Navani, 2 and 3 have acted in complete contravention to law and are most likely indulged in forging and fabricating documents so as to make wrongful gains to themselves.*

Misappropriation of Defendant No.17's assets/properties

*133. **The Defendant No.17 Company had purchased a property being a plot of land admeasuring 5,200 sq. mtrs. or thereabouts at Nalasopara in or around the year 1994/1995**.*

*134. **However, the Plaintiff has sometime in or around the year 2015 become aware of the fact that Late Vasudev Navani has sold the Nalasopara property and has misappropriated the monies received from such sale to himself and/or his family members.** The Plaintiff states that he has no documentation in this regard and all such documentation is available with Late Vasudev Navani.*

*135. From the foregoing, it is clear that **Late Vasudev Navani has misused the assets/properties of the Defendant No.17 Company and treated the same as his own fiefdom.** By doing so, Defendant No.1 has deprived the Plaintiff and the Defendant No.17 Company of its valuable property and assets including the proceeds from the sale of such assets.*"

(Emphasis added)

Thus, what is sought to be contended by the Plaintiff is that the Plaintiff has shown to have transferred his shareholding, however, the said transfer of his shareholding is without his knowledge, authority and or consent and therefore it is the contention of the Plaintiff that his shareholding in the Defendant No.17- Company is required to be reinstated. In the light of these contentions raised in the original Plaint, the contentions sought to be raised in proposed new Paragraph No.134-A are required to be appreciated. The said Paragraph No.134-A reads as under :

> "*134-A. Further,* ***the Defendant No.17 has invested large sums of monies in Bharat Shah Group of companies and after a settlement arrived at between Late Vasudev Navani and Mr. Bharat Shah, the amounts were received in Defendant No.16.***"

12. Thus, it is clear that a bare perusal of the said Paragraph No.134-A read with Paragraph Nos.128 to 135 which is regarding the shareholding in the Defendant No.17-Company and misappropriation of Defendant No.17's assets and properties, better particulars/more information is given with respect to the said claim. No new prayers are sought to be added. It is required to be noted that the nature of the Suit is not being changed.

13. Learned Counsel appearing for the Plaintiff has relied on the decision of the Supreme Court in ***Rajesh Kumar Aggarwal*** (supra) He has relied on Paragraph Nos.15, 16, 18, 19 and 22(2) of the said decision, which reads as under:-

"*15. The object of the rule is that* ***the courts should try the merits of the case that come before them and should, consequently, allow all amendments that may be necessary for determining the real question in controversy between the parties provided it does not cause injustice or prejudice to the other side****.*

16. Order 6 Rule 17 consists of two parts. ***Whereas the first part is discretionary (may) and leaves it to the court to order amendment of pleading. The second part is imperative (shall) and enjoins the court to allow all amendments which are necessary for the purpose of determining the real question in controversy between the parties.***"

"18. ***As discussed above, the real controversy test is the basic or cardinal test and it is the primary duty of the court to decide whether such an amendment is necessary to decide the real dispute between the parties. If it is, the amendment will be allowed;*** *if it is not, the amendment will be refused.* ***On the contrary, the learned Judges of the High Court without deciding whether such an amendment is necessary have expressed certain opinions and entered into a discussion on merits of the amendment.*** *In cases like this, the court should also take notice of subsequent events in order to shorten the litigation, to preserve and safeguard the rights of both parties and to subserve the ends of justice.* ***It is settled by a catena of decisions of this Court that the rule of amendment is essentially a rule of justice, equity and good conscience and the power of amendment should be exercised in the larger interest of doing full and complete justice to the parties before the court.***

19. While considering whether an application for amendment should or should not be allowed, the court should not go into the correctness or falsity of the case in the amendment. Likewise, it should not record a finding on the merits of the amendment and the merits of the amendment sought to be incorporated by way of amendment are not to be adjudged at the stage of allowing the prayer for amendment. This cardinal principle has not been followed by the High Court in the instant case."

"*22. …*

2. Jai Jai Ram Manohar Lal v.National Building Material Supply [(1969) 1 SCC 869 : AIR 1969 SC 1267]

> ***It was held that a party cannot be refused just relief merely because of some mistake, negligence, inadvertence or even infraction of the rules of procedure. The court always gives leave to amend the pleading of a party, unless it is satisfied that the party applying was acting mala fide, or that by his blunder he had caused injury to his opponent which may not be compensated for by an order of costs. However negligent or careless may have been the first omission and however late the proposed amendment, the amendment may be allowed if it can be made without injustice to the other side.***" "
>
> (Emphasis added)

14. Thus, on the touchstone of the law laid down by the Supreme Court in *Rajesh Kumar Aggarwal* (supra), it is clear that the proposed amendment falls in the second part of Order VI, Rule 17 of the CPC as contemplated in Paragraph No.16 of the said decision. Thus, the proposed amendment is required for the purpose of determining the real question in controversy between the parties. It is an admitted position that the proviso to Order VI, Rule 17 in the present case has no application as the amendment is at pre-trial stage. In fact, there cannot be any prejudice caused to the Defendants as none of the Defendants have filed written statements even after a period of 7 years of filing of the Suit and even after lapse of considerable period after the Defendants have been served.

15. It is also required to be noted that the entire claim of the Plaintiff is that by playing fraud on the Plaintiff the Plaintiff's shareholding in Defendant Nos.7 to 20, 23 to 29, 31 and 32 is illegally and fraudulently transferred. In fact, in the nature of the Suit and in view of the contentions raised that the Defendants have played fraud on the Plaintiff, the Defendants should have filed the written statement diligently. Instead of the same, when the Plaintiff is giving more and better particulars of the fraud, the Defendants are opposing the amendment application.

16. Thus, there is no substance in the contentions raised by the learned Counsel appearing for the Defendants.

17. Mr. Bharucha, learned Counsel appearing for the Defendant Nos.25, 35 and 36 has also pointed out Paragraph No.46 of the Schedule of amendment, by which Paragraph No.145-A is sought to be introduced in the Plaint. He has raised the same objection to said amendment as raised to introduction of amendment by introducing Paragraph No.134-A. To appreciate said contention, it is required to be noted that in Paragraph Nos.143 to 146, the Plaintiff has set out the details regarding Bhadrasen Construction Pvt. Ltd. i.e. Defendant No.20. The said Paragraph Nos.143 to 146 read as under:

> "*143.* ***The Plaintiff along with Late Vasudev Navani incorporated the Defendant No.20 Company sometime in the year 1989.***
>
> *144.* ***The Plaintiff submits that the authorized share capital of the Defendant No.20 Company at the time of its formation was Rs.5,00,000/- and as of March 31, 2016 is Rs.5,00,000/- with a paid up capital of Rs.100,000/-.***
>
> *145. As stated above,* ***the Plaintiff resigned from this***

Company on December 13, 1997 *by his resignation letter dated December 12, 1997. The table below sets out the initial shareholding in the said company i.e. prior to the fraudulent transfer of the Plaintiff's shares and issuance of new shares as compared with the current Shareholding of the Company (as March 31, 2016):*

Initial shareholding of the Company	Shareholding post the fraudulent transfers (as of March 31, 2016)
a. Plaintiff – 1 equity share b. late Vasudev Navani – 1 equity share	a. Defendant Nos.1 - Late Vasudev Navani and 3 – 1 equity share b. Defendant Nos.1 - Late Vasudev Navani and 2 – 1 equity share c. Bharat Shah Family Trust - 1 equity shares. d. Manish Bhadrasen Thakker, Defendant No.4 - 1 equity shares. e. A. N. Corp. Ltd., Defendant No.9-4990 equity shares f. Navani Builders Pvt. Ltd., Defendant No.17- 1 equity shares g. Agastmuni Construction Pvt. Ltd., Defendant No.24 – 4880 equity shares h. Navani Builders Pvt. Ltd., Defendant No. 18 – 106 equity shares

A copy of the Annual Return and Balance Sheet of the Defendant No.20 Company as of March 31, 2016 is hereto annexed and marked as ***Exhibit-AA.***

146. ***A perusal of the table above indicates that the Plaintiff is no longer shown as a shareholder in the Defendant No.20 Company. The Plaintiff's shareholding has clearly been transferred possibly at the behest of Defendant Nos.1 - Late***

> ***Vasudev Navani, 2 and 3 abovenamed. The Plaintiff states that such transfer of his shareholding has taken place without his knowledge, authority and/or consent.*** *Therefore, it is submitted that if any share transfer forms actually exists by which such (purported) transfer has taken place, the Plaintiff states that his signature on the same has been forged by or at the behest of Defendant Nos.1 - Late Vasudev Navani, 2 and 3.*"

18. Thus, what is sought to be contended by the Plaintiff is that the transfer of Plaintiff's shareholding in the Defendant No.20-Company has taken place without his knowledge, authority and or consent. The Paragraph No.145-A which is sought to be introduced by amendment is as follows:

> "*145-A.* ***In or around 1989-1990, the Defendant No.20 issued further share capital and Bharat Shah and Manish Thakkar also became shareholders of the said company. At that point of time, the shareholding of the Plaintiff was reduced to 25% of the total shareholding and the same continued till the Plaintiff resigned from the Defendant No.20 company.***"

Thus, in this case, it is very clear that the Plaintiff is giving better particulars regarding his claim that Plaintiff's shareholding in the Defendant No.20 - Company has been transferred without his knowledge, authority and or consent and therefore the transfer is fraudulent. Thus, the contention raised that the amendment may be allowed as the same is pre-trial amendment, and it be clarified that the said amendment will not relate back to the filing of the Suit, no such clarification needs to be given in this case, as it is the contention of the

Plaintiff that fraud has been played on him and therefore various contentions are raised in the Plaint and accordingly prayers are sought. By the amendment what is sought to be done is that better particulars are provided with respect to the Suit claim and no new prayer is sought to be introduced. Thus, for the reasons recorded earlier, there is no substance in the contentions raised by the Defendants.

19. Learned Counsel appearing for the Defendant Nos.2 to 4, 8 to 10, 16 to 18, 20, 21, 33 and 34 has pointed out Paragraph No.18 of the Schedule of amendment by which certain additions are made in Paragraph No.67. The original Paragraph No.67 reads as under:

> "*67. Moreover, from the table above, it can be seen that* ***Late Vasudev Navani has allotted to himself and his family members around 2,00,000 shares of the Defendant No.9 Company. The Plaintiff states that he became aware of the fact that these shares were allotted sometime in the year 2003 at par (and not the prevailing market value), pursuant to enquires made by him with the Registrar of Companies.***"

By proposed amendment in Paragraph No.67 the following portion is proposed to be amended :

> "***18. In paragraph 67, line 3, add as follows:***
>
> *Further,* ***in or around 1995-96, the Defendant No.9 Company purchased a property known as Ammu located at JVPD Scheme Juhu owned by one Mr. Menon. Since the bye laws of the society did not permit a company to be a member, the said property was bought in the name of Late Vasudev Navani though the real owner of the property was Defendant No.9. In fact, an amount of Rs.1 crores utilized to make the part payment for the property was done from the account of one of***

> ***the group companies of AN Group. Further Payment of Rs.25 lakhs was done through one of the group companies Tranbak Group promoted by Defendant No.5.***
>
> ***In the year 2001-02, Late Vasudev Navani surrendered the rights of the Defendant No.9 in the property and received an amount of Rs.2.25 crores. However, the said amount was intentionally not brought back to the Defendant No.9 company and was used in the year 2003 to allot the shares of Defendant No.9 company to himself and his family members, thus misappropriating the funds of the Defendant No.9 and/or any other group company. The*** *Plaintiff states that the Plaintiff became aware of the fact of transfer of shares of Defendant No.9 company in the year 2014 at par pursuant to the enquiries made with the Registrar of Companies.*"

20. Thus, by way of amendment, the better particulars regarding fraud are sought to be brought on record. For the reasons recorded earlier, there is no impediment in allowing the said amendment.

21. Accordingly, the Interim Application is allowed in terms of prayer clause (a).

22. Mr. Kamerkar, learned Counsel appearing for the Plaintiff states that the Plaintiff will pay cost of Rs.25,000/- to the High Court Law Library, Bombay within a period of 14 days from today. Said statement made on behalf of the Plaintiff is accepted as undertaking given to this Court.

23. Mr. Kamerkar, learned Counsel for the Plaintiff further states the name of the Defendant No.31 has changed in the year 2010. In view of this contention, learned Counsel for the Plaintiff also seeks leave to change the name of the Defendant No.31. Leave as sought is granted.

24. Amendment as sought by prayer clause (a) of the Interim Application and as sought herein above, be carried out within a period of 2 weeks. Amended copy be served on all the Defendants within a period of 2 weeks thereafter.

25. The Interim Application is disposed of in above terms.

[MADHAV J. JAMDAR, J.]