

Arjun

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

INTERIM APPLICATION NO.1202 OF 2024

IN

SUIT NO.3219 OF 2010

M/s Gokul Construction Company

...Applicant

IN THE MATTER BETWEEN:

M/s Gokul Construction Company

...Plaintiff

Versus

Sher Mohammed Azimuddin Sodawala & Ors.

...Defendants

Mr. Piyush Raheja a/w Mr. Rahul Vyas i/b N. S. Patel & Co., for the Applicant/Plaintiff.

Mr. Maulik K. Tanna a/w Mr. Vishal K. Tanna, for Defendant Nos.1 to 27.

Mr. R. A. Thorat, Senior Advocate a/w J. K. Shah & Pooja Shah i/b RJ Law, for Defendant Nos.1 to 7, 9 to 19, 21 to 31 & 33 to 35 in IA/1202/2024.

Mr. Kayval P. Shah a/w Mr. Tejas K. Sanghrajka a/w Siddhali Adhikari, for Defendant Nos.29a to 53 in Suit/3219/2010.

Ms. Prarthnaa Thaker i/b M/s. Divekar Bhagwat & Co., for Defendant No.54.

CORAM: MADHAV J. JAMDAR, J.

DATED: 22 NOVEMBER 2024S

P.C.:

1. The Interim Application is taken out seeking liberty to amend the plaint as per the Schedule annexed to the Interim Application. The said Schedule is from Page Nos.19 to 29. By the proposed amendment

Paragraph Nos.23a to 23f are sought to be included in the plaint and the same concerns about the subsequent events which have taken place 17th January 2023 onwards during the pendency of the Suit.

2. Mr. Thorat, learned Senior Counsel appearing for the proposed Defendant Nos.55 to 89 submits that the Suit has been filed under Section 6 of the *Specific Relief Act, 1963* and therefore the said Amendment changes the nature of the Suit. He further submits that there is no basis in the amendment for reliefs of injunction and the Court Receiver.

3. It is the contention of Mr. Raheja, learned Counsel for the Applicant / Plaintiff that although the Suit filed has been filed under Section 6 of the *Specific Relief Act, 1963*, on 17th January 2023 at about 12:30 p.m. some persons have entered the suit property and on the very next day i.e. on 18th January 2023 the Application has been filed in the names of the proposed Defendant Nos.55 to 89 before the Tahsildar falsely claiming that their predecessors were the protected tenants and entitled to purchase the suit lands. He therefore submitted that the plaint is required to be amended and the contentions raised therein are in furtherance of the Plaintiff's claim under Section 6 of the *Specific Relief Act, 1963*. He states that there is nothing to show that the proposed amendment changes the nature of the Suit.

4. Mr. Raheja, learned Counsel submits that the contentions raised

by Mr. Thorat, learned Senior Counsel that there is no basis for relief of injunction and of Court Receiver will amount to going into the merits of the amendment which is not permissible. He submits that added Defendants as well as Original Defendants have got right to file additional written statement / written statement and therefore they will not suffer any prejudice. In any case, he submitted that the amendment is necessitated due to subsequent events which have bearing on the claim under Section 6 of the *Specific Relief Act, 1963*.

5. There is substance in the contention raised by learned Counsel appearing for the Plaintiff.

6. Although the trial has commenced by framing of issues and filing of Affidavit of evidence of PW-1, the amendment concerns subsequent events. There is no delay in filing the Interim Application and therefore requirement of proviso of Order VI Rule 17 of the *Code of Civil Procedure, 1908* is complied with.

7. Accordingly, case is made for grant of Interim Application. The Interim Application is allowed in terms of prayer clause (a). Amendment be carried out and amended copy be served on the learned Advocates appearing for the Defendants/newly added Defendants within a period of 4 weeks from today

8. The Defendants/newly added Defendants are at liberty to file additional written statement/written statement within a period of 8

weeks after service of the amended plaint.

9. The Interim Application is disposed of in above terms with no Order as to costs.

[MADHAV J. JAMDAR, J.]