

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 4628 OF 2022

Raghunath Manikrao Rohite

VERSUS

Ansar Khan Sher Khan

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Advocate for the Petitioner : Mr. Kulkarni Suvidh S.

Advocate for Respondent : Mr. Tungar Hrishikesh V.

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CORAM : SIDDHESHWAR S. THOMBRE, J.

DATED : DECEMBER 09, 2025

PER COURT :

1. Heard learned counsel for respective parties.
2. By way of present petition, the petitioner challenges the order dated 02.01.2021 passed below Exhibit-32 by the learned Civil Judge, Senior Division, Beed in Special Civil Suit No.09 of 2014, whereby the application for amendment in the plaint filed by the respondent herein came to be allowed.
3. Learned counsel for the petitioner submits that if such amendment is allowed, it will change the nature of suit. In fact, the claims are already hopelessly time barred and if such amendment is allowed, it will be contrary to the settled provisions of law laid down by the Hon'ble Apex Court in the matter of *L.C. Hanumanthappa (since dead) by Lrs Vs. H.B. Shivakumar* reported in *AIR 2015 SC 3364*, more particularly para 22 which reads as under :

“22. In K. Raheja Constructions Ltd. and Anr. v. Alliance Ministries and Ors., 1995 Supp (3) SCC 17: (AIR 1995 SC 1768), this Court was seized with a belated application to amend a plaint filed for permanent injunction. Seven years after it was filed, an amendment application was moved seeking to amend the plaint to one for specific performance of contract. In turning down such amendment on the ground that it was time-barred, this Court held :

"It is seen that the permission for alienation is not a condition precedent to file the suit for specific performance. The decree of specific performance will always be subject to the condition to the grant of the permission by the competent authority. The petitioners having expressly admitted that the respondents have refused to abide by the terms of the contract, they should have asked for the relief for specific performance in the original suit itself. Having allowed the period of seven years to elapse from the date of filing of the suit, and the period of limitation being three years under Article 54 of the Schedule to the Limitation Act, 1963, any amendment on the grounds set out, would defeat the valuable right of limitation accruing to the respondent." [at para 4]"

4. Learned counsel for the petitioner further submits that the learned Trial Court ought not to have allowed the amendment application. He would further submit that after cross-examination, there was specific admission given by the plaintiff that he is not ready to pay the balance amount. Therefore, only to cover up the case, he filed an application for amendment. He further submits that the suit was part-heard and the plaintiff has led the evidence, therefore, at

such a belated stage, the Trial Court ought not to have allowed the amendment application.

5. Per contra, Mr. Tungar, learned counsel for respondent submits that the respondent filed a suit for specific performance of contract and only he wants to amend the prayer by inserting that, if he fails to prove that he has paid Rs.1,50,000/- to the defendant, he is ready to pay the entire amount as shown in the agreement to sale. He submits that by allowing the said amendment, it will not change the nature of suit. He submits that pursuant to the order, the amendment was already carried out and the evidence was partly led by the parties.

6. After hearing the arguments advanced by both parties, application for amendment and order passed thereon, it reveals that the plaintiff has filed an application stating that he wants to amend the prayer clause only by inserting that if he fails to prove that he has paid Rs.1,50,000/-, he is ready to pay the entire amount as shown in the agreement to sale and it will not change the nature of suit.

7. The learned Trial Court has observed that if the amendment is allowed, it will not change the nature of suit. Therefore, I do not find any perversity in the order dated 02.01.2021 passed below Exhibit-32 by the learned Civil Judge, Senior Division, Beed in Special Civil Suit No.09 of 2014 and I am not inclined to

interfere with the order passed by the Trial Court under Article 227 of the Constitution of India.

8. Writ Petition is dismissed. No order as to cost.

(SIDDHESHWAR S. THOMBRE, J.)