



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

55 WRIT PETITION NO. 4860 OF 2023

JATINDAR VISHWANBHARLAL ABBOT
VERSUS
MUBIN BSHIR KHAN HASAN AND ANOTHER

Ms.Sunita G. Sonawane, Advocate for the petitioner.
Mr.N.N.Bhagwat, Advocate for respondent No.1.

CORAM : KISHORE C. SANT, J.
DATE : 10.03.2025

PC :-

01. Heard learned Advocates for the parties. This Writ Petition is against an order dated 25.01.2023 passed by the learned Joint Civil Judge, Senior Division, Ahmednagar, below application Exh.33, in Special Civil Suit No.20 of 2021. The petitioner is the original defendant, respondent No.1 is the plaintiff and respondent No.2 is also the defendant in the said suit.

02. The facts giving rise to this petition are as under :-

03. Present respondent No.2 was original owner of a land from Plot No.12, admeasuring 3480 sq.ft., in Survey No.87A, situated at Savedi, Ahmednagar. He entered into an agreement with the present

petitioner for sale of said land. However, later-on, he did not execute sale-deed and therefore the petitioner was required to file a Special Civil Suit bearing No.149 of 2017, seeking specific performance of an agreement. In the said suit, compromise came to be entered into and a decree was passed on 21.09.2022. In the meantime, respondent No.1 also filed a suit against present petitioner and respondent No.2 seeking specific performance of contract as respondent No.2 had entered into an agreement with respondent No.1. Said suit is bearing Special Civil Suit No. 20 of 2021.

04. Since compromise decree took place after filing of SCS No. 20 of 2021, the plaintiff is SCS No.20 of 2021 filed an application, seeking amendment. By way of the amendment, he sought declaration that the compromise decree is not binding upon him. He prayed for injunction against present petitioner and respondent No.2. The said application was opposed. However, the learned Trial Court allowed the said application vide impugned order. Thus, the petitioner is before this Court.

05. Learned Advocate for the petitioner Ms.Sonawane vehemently argued that allowing the application is against the spirit of

the provisions of Order 6 Rule 17 of the CPC. The contract clause and the averments would clearly show that same is changing the nature of the suit. Initially, the suit was only for specific performance of contract. Now, the plaintiff is seeking declaration in respect of compromise decree, where he was not a party. Now that will change the nature of the suit. Secondly she submits that if at all the compromise decree is to be challenged, same needs to be challenged before the same Court, which has passed the order. She is relying upon judgment in the case of **Basavaraj Vs. Indira & Ors., in Civil Appeal No. 2886 of 2012** delivered by the Hon'ble Supreme Court. She, thus, submits that the order passed by the Trial Court is totally against the law and deserves to be quashed and set aside.

06. Learned Advocate for the respondent opposed the petition. He submits that he was not party to the suit filed by the petitioner. He is not even party to the compromise that has taken place between the parties in that suit. Since there are subsequent developments, he is required to amend the suit to avoid multiplicity of litigations. Learned Trial Court has considered all the aspects and has allowed the application. He relied upon judgment of the Hon'ble Apex Court in the case of **Chitralekha Builders and Ors. Vs. G.I.C.Employees Sonal**

Vihar Co-op. Housing Soc. Ltd. & Anr., 2021 (2) All.M.R.776.

07. Considering the rival submissions, this Court has to consider whether the order is correct. The learned Trial Court while passing the order has observed that the compromise deed has taken place after filing of the suit. In that view, it is observed that the amendment is necessary. He has also specifically observed that there shall be opportunity to file additional written statement to the defendants. In the judgment in the case of **Basavaraj [supra]** the Hon'ble Apex Court held that the only remedy available to a party to a consent decree to avoid such consent decree is to approach the Court which recorded the compromise and made a decree in terms of it. In the present case, admittedly, the respondent is not a party to the suit and the compromise decree. Thus, there is no question of his availing the remedy to approach the same Court. This Court finds substance in the submissions of the learned Advocate for the respondent made on the strength of judgment in the case of **Chitralekha [supra]**. Para No. 18 of the said judgment is reproduced as under :-

"18. We are also of the considered view that since the Appellants were not a party to the Consent Terms as is evident from the record, when the Orders came to be passed on 16.02.2005 followed with 03.10.2005, it may not bind the

Appellants. Its legal effect is open to be examined in the substantive suit filed at their instance independently on its own merits in accordance with law. We do not find any error having been committed by the High Court, which may call for our interference.”

08. It is, thus, clear that in the present case, the respondent i.e. the plaintiff in the suit is not a party to the compromise. Therefore, the remedy of approaching the same Court is not open to him. Certainly, compromise has taken place after filing of the suit and thus he rightly filed an application for amendment. The merits of the amendment can be gone into during the course of the trial.

09. This Court does not find any illegality or perversity in the impugned order passed by the Trial Court. Consequently, this Court finds that there is no substance in the petition. The petition, therefore, stands dismissed with no order as to costs.

[KISHORE C. SANT, J.]