

Jvs.

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 1299 OF 2019

Digitally
signed by
JAYANT
VISHWANATH
SALUNKE
Date:
2025.07.30
11:01:51
+0530

Anjali Rajshekhar Patil	}	Petitioner
versus		
Vasant Bhuvaneshwar Muttur	}	Respondent

Mr. Prasad P. Kulkarni with Mr. Amol A. Kanaki for petitioner.

Mr. Samir Kumbhakoni for respondent.

CORAM: ALOK ARADHE, CJ.

DATE: JULY 29, 2025

ORAL ORDER:

1. In this petition under Article 227 of the Constitution of India, the petitioner has challenged the validity of the order dated 11th December 2018 passed by the Lower Appellate Court, by which the application seeking amendment of the plaint has been rejected.

2. Facts giving rise to filing of the writ petition, briefly stated, are that the petitioner had filed suit seeking relief of specific performance of the contract. The aforesaid civil suit was dismissed vide judgment and decree dated 5th February 2018. Being aggrieved, the petitioner filed an appeal. During the pendency of the appeal, the petitioner filed an application on 20th November 2011 seeking leave to amend the plaint. By the proposed amendment, the petitioner/plaintiff wanted to incorporate a plea with regard to development agreement in

favour of a developer and to implead this developer. The petitioner also sought to incorporate the relief of refund of earnest money. The Lower Appellate Court, by the impugned order dated 11th December 2018 has rejected the aforesaid application on the ground that the same is not necessary to resolve the dispute between the parties. Hence this petition.

3. At the outset, learned counsel for the petitioner submitted that the challenge in this petition is confined to the order only to the extent it refuses to refund the earnest money.

4. Learned counsel for the petitioner submitted that the Lower Appellate Court ought to have appreciated that the relief with regard to refund of earnest money can be resolved at any stage of the proceedings and to the aforesaid extent, the Lower Appellate Court erred in not permitting the petitioner to incorporate the plea of refund of earnest money.

5. On the other hand, learned counsel for the respondent supported the impugned order.

6. I have considered the submissions of the parties and perused the record.

7. Section 22 of the Specific Relief Act, 1963 permits the petitioner to incorporate the relief of refund of earnest money at any time. In the facts and circumstances of the case, to the aforesaid limited extent, the Lower Appellate Court ought to have permitted the petitioner to incorporate the plea.

8. The impugned order, to the aforesaid extent, suffers from error apparent on the face of record as well as exhibits lack of application of mind, which is hereby quashed and set aside to the limited extent of refusing to incorporate the relief with

regard to refund of earnest money. To the aforesaid extent, the application for amendment is allowed. The Lower Appellate Court shall decide the appeal expeditiously.

9. Accordingly, the writ petition is disposed of.

(CHIEF JUSTICE)