

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 7641 OF 2024

Bharat Kashinath Pichad (d) }
 through his legal heir Smt. Nalini }
 Bharat Pichad (d) Age: 76 years, }
 Occu: Agriculture and Business, }
 R/o. Bhartayan Bungalow, }
 Shraddha Vihar Kale Mala, }
 Anandwali, Tal-Nashik, Dist-Nashik }
 through Lrs. Smt. Sunata Vinayak }
 Parkar R/o 101/1-A, }
 Agnishamandal Co.Op Hsg. Soc. }
 Ltd, Near Deonar Municipal Colony, }
 Govandi-West, Mumbai-400 043. }

.....Petitioner
 (Orig. plaintiff)

V/s.

1. Mahendrakumar Nama Gangurde }
 Age: 55 years, Occu: Agriculture }
2. Sitabai Nama Gangurde }
 Age 50 years, Occu: Agriculture }
 Both R/o at : Near Salunke }
 Hospital, Next to Chandrabhaga }
 Bungalow, New Rajwada, Takli }
 Village, Tal-Nashik, Dist: Nashik. }
3. Rajendra Nama Gangurde }
 Age: 52 yrs. Occu: Agriculture }
4. Surendra Nama Gangurde }
 Age: 50 yrs. Occu: Agriculture. }
5. Narendra Nama Gangurde }
 Age 41 Yrs, Occu: Agriculture }
6. Anita Nama Gangurde }
 Age: 48 yrs, Occu: Agriculture }
 Respondent Nos. 3 to 6 R/o at }
 Kundwa Colony, Post-Goreghat, }
 Dist: Balat, Madhya Pradesh. }

7. Phulyabai Ranganath Wagh	}	
Age: 60 yrs. Occu: Agriculture	}	
R/o at : Sadgao, Tal-Nashik,	}	
Dist: Nashik.	}	
8. Shri Jaydeep Bharat Deshmukh	}	
Pichad, Age 52 yrs. Occu:	}	
Agriculture and Business R/o at	}	
Bhartayan Bungalow, Shraddha	}	
Vihar Kale Mala, Anandwali, Tal-	}	Respondents
Nashik, Dist-Nashik.	}	(Orig. defendants)

Mr. Vivek Salunke I.by Mr. Ajinkya Jaibhave, for the petitioner.
Mr. V.A. Shastry, for the respondents.

CORAM : N.J. JAMADAR, J.
DATED : 7TH APRIL, 2025

JUDGMENT:

1. Rule.
2. Rule made returnable forthwith and, with the consent of the counsel for the parties, heard finally.
3. The petitioner/plaintiff takes exception to a judgment and order dated 9th October 2023 passed by the learned Civil Judge, Nashik, whereby an application preferred by the plaintiff for amendment in the plaint came to be rejected so far as the prayer for recovery of possession of the suit premises.
4. Shorn of unnecessary details, the background facts leading to this petition, can be stated, in brief, as under:

4.1 Bharat Pichad, the predecessor in title of the petitioner, had entered into an agreement dated 16th May 1995 to purchase the land bearing Survey No. 149 (the suit property). Under the said agreement, the defendant nos. 1 to 7 had agreed to sale the suit property for a consideration of Rs. 5,87,525/- Part consideration was received under the said agreement. In accordance with the terms of the said agreement, the defendants were to obtain permission to sell the suit property as it was of restricted tenure. The defendants had also agreed to deliver the possession of the suit property after receipt of the balance consideration.

4.2. Asserting that, the defendants refused to perform their part of the contract, the deceased – plaintiff had instituted a suit for specific performance of the contract after obtaining the permission of the competent authority and for delivery of the possession of the suit property.

4.3 During the pendency of the suit, and after the evidence of the defendants came to be recorded, the plaintiff filed an application seeking permission to amend the plaint to incorporate, *inter alia*, the averments that the

defendants had delivered possession of the suit property to the plaintiff in part performance of the contract and, in the event, the Court comes to the conclusion that the plaintiff is not entitled to the specific performance of the contract, the possession of the plaintiff over the suit property which has been delivered by way of part performance of the contract, be declared to be protected. An alternate prayer of damages to the tune of Rs. 5 crore was also sought to be incorporated.

4.4 The application was resisted by the defendants.

4.5 By the impugned order, the learned Civil Judge was persuaded to partly allow the application opining that in view of the provisions contained in Sections 21 and 22 of the Specific Relief Act, 1963, the plaintiff was entitled to seek amendment in the plaint with regard to the relief of compensation and refund of earnest amount. However, since the plaintiff had already prayed for possession of the suit property, the plaintiff was not entitled to seek the relief of possession and claim protection under Section 53-A of the Transfer of Property Act, 1888 for the reason that the

defendants, during course of their cross-examination, admitted that the plaintiff is in possession of the suit property. Consequently, the amendment to the extent of averments sought to be incorporated by way of Para 8(b) of the text of the draft amendment and prayer clause 13(b) was rejected.

5. Being aggrieved, the plaintiff has invoked the writ jurisdiction.

6. Mr. Salunke, the learned counsel for the petitioner, would submit that the Trial Court has, in fact, granted amendment in the plaint which contain averments regarding the plaintiff's claim of possession over the suit property. As a necessary corrolary to the grant of amendment to incorporate the Para 8(a) of the text of draft amendment, the proposed amendment in Para 8(b) and prayer clause 13(b) also ought to have been allowed.

7. Mr. Salunke further submitted that the Trial Court was in error in observing that the proposed amendment would alter the nature and character of the suit. While declining to grant amendment, learned Judge has gratuitously suggested that the plaintiff might have obtained possession of the suit property from the defendants forcibly,

which case was never pleaded by the defendants.

8. Mr. Salunke would urge that in view of the provisions contained in Section 22(1)(b) of the Specific Relief Act, 1963, the Court is empowered to grant any other relief to which the plaintiff is entitled to, at any stage of the suit. Therefore, the impugned order deserves to be quashed and set aside to the extent it rejects the amendment in the plaint so as to incorporate Para 8(b) and 13(b) of the text of the draft amendment.

9. Mr. Shastry, learned counsel for the respondents/defendants, countered the submissions on behalf of the petitioner. Mr. Shastry submitted that the provisions contained in Section 22 of the Specific Relief Act, 1963 do not come to the aid of the plaintiff. What section 22 of the Specific Relief Act, according to Mr. Shastry, permits is, seeking an additional relief which was not initially claimed. Section 22 cannot be resorted to make substantive amendments in the body of the plaint as distinguished from the relief which was not initially sought. The proposed amendment would completely alter the character of the suit as the fact that the plaintiff had been put in possession of the suit property completely changes the premise of the suit. A totally new case is sought to be pleaded.

Resultantly, the entire trial would be reopened. Therefore, the learned Civil Judge was justified in rejecting the application for amendment to the extent the plaintiff claims to be in possession and, more particularly, protection of the possession under Section 53-A of the Transfer of the Property Act, 1888.

10. As regards the contention on behalf of the petitioner that the Para 8(b) and 13(b) of the text of the draft amendment is essentially consequential to the amendment which has already allowed, Mr. Shastry, would urge that the Trial Court could not have even permitted the said amendment. At any rate, illegality cannot be perpetuated, urged Mr. Shastry. By the proposed amendment the plaintiff does not seek additional relief and, therefore, the recourse to Section 22 of the Specific Relief Act, 1963 is wholly impermissible, reiterated Mr. Shastry.

11. I have carefully considered the submissions canvassed across the bar. Evidently, the driving force behind the application for amendment was a categorical admission, during the course of the cross-examination by DW-1, to the effect that, the suit property was in the possession of the plaintiff. The aforesaid admission as to the possession of the plaintiff over the suit property is, however, against

the tenor of both the averments in the plaint and the recitals in the agreement for sale, for the specific performance of which the suit came to be instituted.

12. In fact, in the plaint the plaintiff had extracted the material terms of the agreement including a recital to the effect that, the possession of the suit property was to be delivered to the plaintiff on the date of execution of the sale deed. Consequently, the plaintiff had not only sought delivery of possession of the suit property but also an injunction to restrain the defendant from creating third party rights in the suit property and delivering the possession of the suit property to such third party.

13. By the proposed amendment, on the strength of the admission elicited in the cross-examination of DW-1, the plaintiff sought to incorporate the averments to the effect that the possession of the suit property was delivered to the plaintiff under the said agreement for sale and, in the event, the Court comes to the conclusion that the plaintiff is not entitled to specific performance of the contract, the possession of the plaintiff over the suit property deserves to be protected under Section 53-A of the Transfer of Property Act, 1888. Consequently, an alternative relief in the nature that the defendant

shall not cause obstruction to the possession and enjoyment of the suit property by the plaintiff; which has been delivered to the plaintiff in part performance of the contract, was sought to be added.

14. As the submissions principally revolved around the permissibility of the amendment in view of the provisions contained in Section 22 of the Specific Relief Act, 1963, it may be necessary to extract the same to appreciate the submissions in a correct perspective.

Section 22 of the Specific Relief Act, 1963 reads as under:

22. Power to grant relief for possession, partition, refund of earnest money, etc.—

(1) Notwithstanding anything to the contrary contained in the Code of Civil Procedure, 1908 (5 of 1908), any person suing for the specific performance of a contract for the transfer of immovable property may, in an appropriate case, ask for—(a) possession, or partition and separate possession, of the property, in addition to such performance; or (b) any other relief to which he may be entitled, including the refund of any earnest money or deposit paid or made by him, in case his claim for specific performance is refused.

(2) No relief under clause (a) or clause (b) of sub-section (1) shall be granted by the court unless it has been specifically claimed: Provided that where the plaintiff has not claimed any such relief in the plaint, the court shall, at any stage of the proceeding, allow him to amend the plaint on such terms as may be just for including a claim for such relief.

(3) The power of the court to grant relief under clause (b) of sub-section (1) shall be without prejudice to its powers to award compensation under section 21.

15. From a plain reading of the aforesaid provisions it

becomes evidently clear that in order to avoid multiplicity of the proceedings, the Parliament, in its wisdom, has provided that the plaintiff may claim a decree for possession, partition and separate possession in addition to the specific performance or any other relief to which he may be entitled to, including the refund of money or deposit paid or made by him, in case his claim for specific performance is refused.

16. The proviso to sub-Section (2) of the Section 22 is of material significance. The main part of sub-Section (2) of Section 22 provides that no relief under sub-Section (1) shall be granted by the Court unless it has been specifically claimed. The proviso, however, mollifies the rigour of want of pleadings at the initial stage. The proviso, thus, provides that where the plaintiff has not claimed any such relief in the plaint, the Court shall, at any stage of the proceedings, allow him to amend the plaint on such terms as may be just for including a claim for such relief. The Parliament has designedly used the word 'shall' followed by the expression, 'at any stage of the proceeding'. The peremptory nature of the legislative intent to permit the amendment to claim reliefs which were initially not claimed is emphasised by the use of the word

‘shall’ and making the stage of the proceeding, in a sense, secondary to the resolution of the dispute between the parties for once and all.

17. In the case of ‘**Vesta Building Products Pvt. Ltd vs Shri. Balasaheb Kashinath Rasal**¹’, this Court had an occasion to consider the nature and the import of the provisions contained in Section 22 of the Specific Relief Act, 1963. The following observations in Para Nos. 18 and 20 of the said decision are material and, hence, extracted below:

“18.....Moreover, the words, "in an appropriate case" and "at any stage of the proceeding" are of material significance and further expand the scope and ambit of the provisions contained in [Section 22](#). The words, "in an appropriate case" indicate that it is not obligatory for the plaintiff to seek such relief in every case. The relief envisaged by Clauses (a) and (b) of Sub-section (1) can be sought and granted provided the case is susceptible of or conducive to grant of such relief. Whereas the words, "at any stage of the proceeding" underscore the fact that the stage of the proceeding does not matter and if a case is made out for seeking those reliefs, stage of the proceedings would not be a hindrance. The expansive nature of this provision stems from the principle that the equitable relief of specific performance to be complete and effective ought to encompass in its fold all that which a party had agreed to perform”.

19.

“20. A profitable reference can also be made to the judgment of the Supreme Court in the case of [Babu Lal vs. Hazari Lal Kishori Lal](#) and others,⁶ wherein the true import

1 (2019) SCC online Bom 1695

of provision contained in [Section 22](#) of the Act, 1963, was expounded by the Supreme Court. It was, inter alia, observed that the proviso to sub-section (2) of [Section 22](#) provided for amendment of the plaint on such terms as may be just for including a claim for such relief "at any stage of the proceeding". The term "proceedings" is a very comprehensive term and generally speaking means a prescribed course of action for enforcing a legal right. It is not a technical expression with a definite meaning attached to it, but one the ambit of whose meaning will be governed by the statute. It indicates a prescribed mode in which judicial business is conducted. The word "proceeding" in [Section 22](#) includes execution proceedings also. It is a term giving the widest freedom to a court of law so that it may do justice to the parties in the case. Execution is a stage in the legal proceedings. It is a step in the judicial process. It is thus clear that the legislature has given ample power to the Court to allow the amendment to the plaint at any stage, including the execution proceedings".

18. On the aforesaid touchstone, reverting to the facts of the case, it is imperative to note that the factum of possession as such was not put in contest. On the contrary, the learned Civil Judge endeavoured to offer a gratuitous explanation by observing that the plaintiff might have forcibly obtained the possession of the suit property from the defendant during the pendency of the suit and, therefore, the admission during the course of the cross-examination was not decisive.

19. I am afraid to sustain the aforesaid approach of the learned Civil Judge. Whether the plaintiff succeeds in establishing the factum

of possession and what consequences follow therefrom are matters of merit and could not have been delved into at the stage of consideration of the application for amendment in the plaint. Likewise, the question whether the plaintiff is entitled to protection of possession, purportedly delivered in part performance of the contract of sale, under Section 53-A of the Transfer of the Property Act, 1881, was also a matter for adjudication.

20. The Trial court could not have, thus, declined to grant the amendment on the premise that the plaintiff claimed the possession of the suit property and, therefore, could not seek relief of protection of possession under Section 53-A of the Transfer of Property Act, 1881. A relief of protection of possession, in the circumstances of the case, may fall within the ambit of the expression, “any other relief” covered by clause (b) of sub-section (1) of Section 22 of the Specific Relief Act, 1963.

21. The thrust of the submission of Mr. Shastry was that, at best, the plaintiff is entitled to an additional relief and cannot be permitted to amend the body of the plaint. I am afraid to accede to this submission. It would be taking a very constricted view of the legislative intent in permitting a party to seek additional reliefs at any stage of the

proceeding. To urge that a bare relief clause can be added, without supporting the said relief by making necessary averments in the body of the plaint, would also be taking a very narrow view of the purpose of the pleadings. A necessary foundation has to be laid in the pleadings to sustain the relief ultimately claimed by a party. Therefore, the submission of Mr. Shastry that plaintiff cannot be permitted to amend the body of the plaint does not merit countenance.

22. If the proposed amendment is considered in the light of the special rules of pleadings envisaged by the provisions contained in Sections 21 and 22 of the Specific Relief Act, 1963, in my considered view, the proposed amendment is necessary for the determination of all the questions in controversy between the parties and there was no justification to reject the amendment to the extent of declaration as to the possession and the claim for protection thereof under Section 53-A of the Transfer of Property Act, 1888.

23. Resultantly, the Petition deserves to be allowed.

24. Hence the following order:

ORDER

- i. The petition stands allowed.

- ii. The impugned order to the extent the Civil Judge has rejected the prayer to amend the plaint by incorporating Para Nos. 8(a) and 13(b) of the text of the draft amendment, stands quashed and set aside.
- iii. The application for amendment stands allowed in toto.
- iv. Necessary amendment, in accordance with the text of the draft amendment incorporated therein, be carried out within a period of four weeks from the date of uploading of this order and amended copy of the plaint be served on the defendants within two weeks thereafter.
- v. The defendants are at liberty to file an additional written statement within 30 days of the service of the amended copy of the plaint.
- vi. No costs.
- vii. By way of abundant caution, it is clarified that the observations hereinabove are confined to determine the legality, propriety and correctness of the order of rejection of amendment in the plaint and this Court may not be understood to have expressed any opinion of the merits of the matter and the Trial Court shall not be influenced by

any of the observations made hereinabove while
adjudicating the suit.

viii. Rule is made absolute in the aforesaid terms.

(N.J. JAMADAR, J)