

Mr. A.P.Lavate with Mr. Simran S., Mr. Sujit i/by Mr. Sandeep Waghmare, for
Petitioner.

DATE : 12 FEBRUARY 2025

1. Heard the learned Counsel for the Petitioner.
2. The challenge in this Petition is to an order dated 19 July 2024 passed by the learned District Judge whereby the application preferred by the Petitioner for amendment in the plaint so as to incorporate the prayer that in the alternative to the prayer of the cancellation of the development agreement, the Petitioner/Plaintiff be awarded compensation of Rs.80 Lakhs, came to be rejected.
3. On 21 May 2004, a development agreement was executed between the Petitioner and Respondent Nos.2 to 4/ Defendant Nos.2 to 4. Under the terms of the said development agreement, a sum of Rs.7 Lakhs was agreed to be paid to the Plaintiff by way of consideration. One of the stipulation was that, in the event the cheques drawn by the Defendants in favour of the Plaintiff were not honoured, the development agreement would stand

terminated and the Defendants would have no right to seek refund of part consideration already paid.

4. Asserting that the cheques drawn by the Defendants were dishonoured, the Plaintiff instituted a suit being Special Civil Suit No.276 of 2006 for a decree of cancellation of the development agreement dated 21 May 2004. In the said suit, the Defendants appeared and filed a counter claim.

5. By judgment and order dated 1 February 2014, the learned Civil Judge, Sr. Division, Pune, was persuaded to dismiss both the suit as well as the counter claim. It was, inter alia, recorded that the Plaintiff failed to establish there was a failure of consideration.

6. The Plaintiff preferred an appeal, being Civil Appeal No.324 of 2014, before the learned District. In the said appeal, an application for amendment seeking alternate relief of compensation was filed.

7. The learned District Judge was persuaded to reject the application as the suit was for cancellation of the development agreement only and the Plaintiff had not sought relief of the payment of the amount of Rs.7 Lakhs for compensation in alternative to the relief of the decree for cancellation of the instrument.

8. Learned Counsel for the Petitioner submitted that during the pendency of the suit as well as appeal, the Defendants had developed the suit property and created third party interests therein. The Petitioner had not been paid

any amount despite being owner of the suit property. Therefore, the Petitioner was constrained to seek the relief of compensation as, in view of the subsequent development, the development agreement may not be eventually cancelled.

9. Since the application for amendment was preferred after the suit came to be dismissed, the interdict contained in the proviso to Order VI Rule 17 had a clear application. It is necessary to note that the Plaintiff had not approached the Court seeking specific performance of the contract. Consequently, the provisions contained in Section 21 of the Specific Relief Act, 1963, which override the provisions contained in Order VI Rule 17, had no application. The suit was for cancellation of the development agreement under Section 31 of the Specific Relief Act, 1963. No case of due diligence so as to overcome the interdict contained Order VI Rule 17 of the Code could conceivably be urged as the application was preferred after the suit came to be dismissed.

10. From the perusal of the averments in the plaint also, it is evident that even at the time of institution of the suit, the Plaintiff had an apprehension that third party rights would be created in the suit property. Therefore, the submission on behalf of the Petitioner that since third party rights have been created, the Plaintiff was constrained to seek alternative relief of compensation, at the appellate stage, does not merit acceptance.

11. From this standpoint, the learned District Judge seems to have committed no error in rejecting the application for amendment. This Court does not find any infirmity in the impugned order which would warrant interference in its supervisory jurisdiction.

12. The Writ Petition, thus, stands dismissed.

13. It is hereby clarified that the observations made in this order shall not be construed as an expression of opinion on the merits of the case of the Plaintiff and the learned District Judge shall not be influenced by any of the observations while deciding the appeal.

(N.J.JAMADAR, J.)